DOCUMENT RESUME

ED 336 085 IR 015 104

TITLE	Federal Information Dissemination Policies and Practices: Hearings before the Government Information, Justice, and Agriculture Subcommittee of the Committee on Government Operations, House of Representatives. One Hundred First Congress, First Session, April 18, May 23, and July 11, 1989.
INSTITUTION	Congress of the U. S., Washington, D. C. House Committee on Government Operations.
PUB DATE	90
NOTE	909p.; Reprints of Federal Register pages contain very small print.
AVAILABLE FROM	Superintendent of Documents, Congressional Sales Office, U.S. Government Printing Office, Washington, DC 20402.
PUB TYPE	Legal/Legislative/Regulatory Materials (090) -- Viewpoints (Opinion/Position Papers, Essays, etc.) (120)
EDRS PRICE	MF06/PC37 Plus Postage.
DESCRIPTORS	*Access to Information; *Federal Legislation; Federal Regulation; *Freedom of Information; *Government Publications; Hearings; *Information Dissemination; Information Networks; Information Technology; *Public Policy; Telecommunications
IDENTIFIERS	Congress 101st; *Freedom of Information Act

ABSTRACT

Three hearings were held in order to conduct a comprehensive review of the issues, problems, and activities affecting the public availability of government information. It is noted that new information technologies, particularly electronic formats and telecommunications, are forcing the reconsideration of the flow of information from the Federal Government to the citizens of the United States. This report presents the opening statement by Chairman Robert E. Wise; statements by 24 witnesses representing various federal agencies and journalistic, library, and legal organizations; and letters and statements submitted for the record. The following witnesses presented statements: (1) Kenneth B. Allen; (2) Scott Armstrong; (3) Jerry J. Berman; (4) Joseph E. Clark; (5) William A. Dobrovir; (6) John J. Franke, Jr.; (7) D. Kaye Gapen; (8) Patti A. Goldman; (9) Edward J. Hanley; (10) Joseph E. Jenifer; (11) Jane E. Kirtley; (12) Gerald D. Kleczka; (13) Nancy Kranich; (14) Paul Massa; (15) Jerry McFaul; (16) Paul K. McMasters; (17) Nicholas E. Mercury; (18) Pat Murphy; (19) John Penhollow; (20) Henry H. Perritt, Jr.; (21) Ronald Plesser; (22) Harold B. Shill; (23) P. James Terragno; and (24) Alan Westin. Nine appendices contain additional miscellaneous materials. (DB)

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FEDERAL INFORMATION DISSEMINATION POLICIES AND PRACTICES

HEARINGS

BEFORE THE

GOVERNMENT INFORMATION, JUSTICE,
AND AGRICULTURE SUBCOMMITTEE

OF THE

COMMITTEE ON
GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES

ONE HUNDRED FIRST CONGRESS

FIRST SESSION

APRIL 18; MAY 23; AND JULY 11, 1989

Printed for the use of the Committee on Government Operations

U.S. GOVERNMENT PRINTING OFFICE
25-914 WASHINGTON : 1990

For sale by the Superintendent of Documents, Congressional Sales Office
U.S. Government Printing Office, Washington, DC 20402

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FEDERAL INFORMATION DISSEMINATION POLICIES AND PRACTICES

TUESDAY, APRIL 18, 1989

House of Representatives,
Government Information, Justice,
and Agriculture Subcommittee
of the Committee on Government Operations,
Washington, DC.

The subcommittee met, pursuant to notice, at 11 a.m., in room 2247, Rayburn House Office Building, Hon. Robert E. Wise, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Robert E. Wise, Jr., Louise M. Slaughter, Al McCandless, and Steven Schiff.

Also present: Lee Godown, staff director; Robert Gellman, chief counsel; Susan Chadderdon, clerk; and Brian Lockwood, minority professional staff, Committee on Government Operations.

OPENING STATEMENT OF CHAIRMAN WISE

Mr. **Wise.** Good morning. This hearing of the Subcommittee on Government Information, Justice, and Agriculture concerning Federal information dissemination policies and practices will come to order. I appreciate everyone coming. I apologize for the slight delay in convening.

Today, the subcommittee is beginning a series of hearings on Federal information dissemination policies and practices. Our purpose is to conduct a comprehensive review of issues, problems, and activities affecting the public availability of Government information.

I have a lengthy opening statement. The good news is I'm going to submit it for the record, so you will not hear much of it.

Since we are starting a little late, I'm going to also truncate my other remarks, simply to say that the free flow of information from the Federal Government to its citizens is central to the successful functioning of the democratic process and to the proper operation of the economy. That's why the policies and practices regulating the dissemination of Government information are so important. This is why we're holding these hearings.

If there's an overall theme, it's that changes in technology are making our information dissemination laws obsolete. Most of our statutes were written in an era when all information was paper. Today, more information is kept in electronic formats and this raises new problems that existing laws do not resolve. I hope these hearings will identify the scope of the problems, as well as appropriate solutions.

Once again, I want to stress that this is a first in a series of hearings. We intend to conduct a hearing once every month or 6 weeks. We're very much interested in major issues concerning the FOIA, such as agency implementation, new information systems that are being implemented, such as we'll hear some today, as well as the practices that various agencies have, good and bad, for handling FOIA requests.

Another area, of course, as we move into the 21st century, the electronic dissemination of information and what the Congress needs to be doing to address that. I'm also glad to see that we have those who have been on both sides of the issue on the *Reporters Committee* case here because that certainly is the most recent decision by the Supreme Court affecting FOIA. I'll be interested in your opinions as to how that should play out in Congress.

I want to take special note and thank David Greenfield for being here. David's the editor of the Charleston Daily Mail which seems to be making a lot of use of FOIA recently. We're glad to have David here.

[The opening statement of Chairman Wise follows:]

Opening Statement

CHAIRMAN BOB WISE

Hearings Before the

Subcommittee on Government Information, Justice, and Agriculture

FEDERAL INFORMATION DISSEMINATION POLICIES AND PRACTICES

April 18, 1989

Today the Subcommittee is beginning a series of hearings on federal information dissemination policies and practices. Our purpose is to conduct a comprehensive review of issues, problems, and activities that affect the public availability of government information.

The federal government is the largest single producer, consumer, and disseminator of information in the United States. There are many segments of American society that need government information in order to function. These include the federal government itself, every type of business and industry, libraries and schools, newspapers and television, state and local governments, and ordinary citizens.

The free flow of information from the federal government to its citizens is essential to the successful functioning of the democratic process and to the proper operation of the economy. This is why the policies and practices that regulate the dissemination of government information are so important. This is why we are holding these hearings.

Ten years ago, the Freedom of Information Act was a principal focus of federal dissemination policies. It still is. But today, the FOIA has been joined by other information distribution mechanisms. New technology is forcing us to reconsider how the federal government provides information to its citizens.

At the same time, it has become increasingly difficult to separate one information dissemination issue from another. For example, in order to evaluate the operations of the EDGAR system at the Securities and Exchange Commission, we need to review the SEC's organic statute, the FOIA, the Paperwork Reduction Act, the Depository Library Act, and possibly other laws as well.

If this hearing has an overall theme, it is that changes in technology are making our information dissemination laws obsolete. Most of our statutes were written in an era when all information was on paper. Today, more information is kept in electronic formats, and this raises new problems that existing laws do not resolve.

There are three major subthemes that we will address in the hearings. First, we will be looking at the operation of the Freedom of Information Act. The FOIA remains a key mechanism for providing to the public the information that the public wants and not just the information that the government wants to release.

The Subcommittee has always attempted to keep the pressure on agencies to comply with the letter and spirit of the FOIA. These hearings will serve that purpose in part. In addition, we will also consider whether there is a need to revise the FOIA to solve current problems.

For example, can an agency release information on paper while denying the same information in electronic formats? What obligation does an agency have to search an electronic database? Will agencies and courts interpret the FOIA to reach a reasonable answer to these questions or will amendments to the law be required?

A second subtheme of the hearings is the development and implementation of new electronic information systems by federal agencies. We will hear today from three agencies operating these systems, and we may ask other agencies to testify in the future.

I support the use of information technology to modernize the government's information activities. But I want to be sure that the benefits will be fully shared with the public. I want to be sure that agencies will not use technology to exercise monopoly control over public information. I want to be sure that fees for electronic information will be reasonable.

Here too, the question is whether we need legislation to direct the development and operation of electronic information systems. We may need to pass an Electronic Freedom of Information Act to resolve the problems presented by electronic record keeping.

The third and final subtheme of the hearings is the way in which the federal government makes information dissemination policy. The Office of Information and Regulatory Affairs is obviously playing a central role. I see two principal issues here. First, is OIRA the right place to make policy? Second, is OIRA making the right policies? These questions are especially timely in view of the upcoming reauthorization of the Paperwork Reduction Act.

This is an ambitious agenda for the Subcommittee, and we will certainly not complete it today. I expect that there will be several more hearings so that we can hear from libraries, members of the press, public interest groups, other information users, and other federal agencies. I hope to be able to announce the next hearing in the series shortly.

Mr. **Wise**. At this point, I will see if Mr. McCandless or Mr. Schiff have any opening statements.

Mr. **McCandless**. Thank you, Mr. Chairman. I have no opening statement. I look forward to the testimony.

Mr. **Wise**. Mr. Schiff.

Mr. **Schiff**. I join in that remark.

Mr. **Wise**. Thank you very much.

Our first panel will be those from the media. We'll be featuring Pat Murphy, publisher of the Arizona Republic and Phoenix Gazette, representing the American Newspaper Publisher's Association and the American Society of Newspaper Editors; Paul McMasters, deputy editorial director of USA Today, and chairman, the Freedom of Information Committee of the Society of Professional Journalists; David Greenfield, as I mentioned, editor of the Charleston—West Virginia—Daily Mail; and Jane Kirtley, executive director of the Reporters Committee for Freedom of the Press.

Ladies and gentlemen, we welcome you before the committee. Before we start, we have a practice of swearing in all witnesses as not to prejudice any witness that may ever appear before the subcommittee.

Does anyone have any objection to that? If you would stand and hold up your right hand.

[Witnesses sworn.]

Mr. **Wise**. All of your statements will be submitted in their entirety for the record. Feel free to summarize. Mr. Murphy, would you like to start?

STATEMENT OF PAT MURPHY, PUBLISHER, ARIZONA REPUBLIC AND PHOENIX GAZETTE, ON BEHALF OF THE AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION AND THE AMERICAN SOCIETY OF NEWSPAPER EDITORS

Mr. **Murphy**. Thank you, Mr. Chairman. I am submitting a lengthier statement, but this will be a summary.

Mr. Chairman, indeed, my name is Pat Murphy and I am the publisher of the Arizona Republic and the Phoenix Gazette. We're the 17th and 24th largest morning and evening newspapers in the country, respectively.

I want to thank you for inviting me on behalf of the 1,400 members of the American Newspapers Publishers Association and the more than 1,000 members of the American Society of Newspaper Editors. We commend you for holding this hearing on the Freedom of Information Act.

May I say at the outset, Mr. Chairman, I've just recently returned from Asuncion, Paraguay, where I attended the midyear meeting of the Inter-American Press Association. It is now just a little over 2 months since the dictatorship of Gen. Alfredo Stroessner was overthrown and for the first time in 34 years, a full generation, the press in that country is free to print the truth.

The Stroessner regime relied on two things for power and two things only. First, brute force, and second, a blackout on information that kept Paraguayans in a virtual state of ignorance.

It is no accident, Mr. Chairman, that the United States is the world's strongest and most stable government because its citizens enjoy the blessings of freedom under the first amendment and are informed about their Government.

I come to Washington with a message, sir. The editors and publishers of America's hometown newspapers care about the Freedom of Information Act. We need the Freedom of Information Act and we use the Freedom of Information Act.

Some say that the stonewalling and delays have made the Freedom of Information Act a useless tool for the press. ANPA and ASNE believe the solution is not to stop using FOIA, but to fix the problems. The Freedom of Information Act is far too valuable.

In just the last few years, the Freedom of Information Act has helped reporters break major stories on the savings and loan scandal, the space shuttle disaster, and our own newspaper uncovered a McCarthy era investigation of Phoenix's own Jesse Owens, the great Olympic champion.

Mr. Chairman, during the 1980's, you and the congressional supporters of the Freedom of Information Act kept decades of progress toward a more open Government from being swept away. The previous administration's record was one of resistance and even hostility to public access to Government information. We hope the new administration will take its lead from President Bush, who has been far more accessible to the press than his predecessor. But we hope the President will take this new openness one step further and make it the administration's policy to provide similar access to Government records and information.

Delay and disregard for time limits is the No. 1 problem facing the press in its use of the Freedom of Information Act. As the General Accounting Office recently reported to you, the State Department took more than 6 months to turn around three-quarters of its Freedom of Information Act requests. The law generally calls for turning over Government records within 10 days.

The numbers, however, do not tell the story nearly as well as the real life experiences we in the newspaper business have with the Freedom of Information Act. Just a few examples, if I may?

In 1986, the Environmental Protection Agency found 2,000 barrels of toxic chemicals buried in Columbia, MS. The EPA conducted a round of tests, but refused to release its conclusions about whether the area was safe. The local newspaper, the Hattiesburg American, filed an FOIA request with the EPA to provide the vital information to an understandably worried community. The EPA took 8 months to release its conclusion. But without FOIA, the people of Columbia, MS would have been in the dark even longer.

Now, let me give you an example of a problem that we faced at the Arizona Republic. In 1985, an FBI agent was tragically killed in Phoenix, killed by another agent who mistook her as an individual involved in a crime. This was the first time in the Bureau's history that one FBI agent accidentally killed another agent. Our reporter filed an FOIA request with the FBI to find out what went wrong. It was only after repeated denials and $25,000 in legal cost to us that we could provide our readers with an explanation. Incidentally, the taxpayers were required to reimburse $10,000 of our legal costs.

Mr. Chairman, despite all the problems with FOIA, it remains an invaluable tool for the press. With your permission, I would like to submit for the record a list of stories which were broken by reporters who made FOIA requests. I would like to highlight just a few to show how valuable FOIA is.

Mr. Chairman, in your own State of West Virginia, the Charleston Gazette discovered, through an FOIA request, that the FBI had accumulated more than 40 years of records on the Gazette. FBI records show that the records were kept because the paper was considered "hostile" to the FBI.

Nearly 8 years ago, the Wall Street Journal found that 10 percent of the Nation's savings and loans were on the Government's troubled list, long before the public knew about the savings and loan crisis.

Finally, our paper learned that during the 1950's, the FBI investigated hometown hero Jesse Owens for un-American activities. The FBI believed that Owens, the great Olympian, was a subversive because he belonged to the National Negro Congress. Newspaper reporting using FOIA will help discourage similar investigations in the future.

Mr. Chairman, these are but a few of the FOIA success stories. ANPA and ASNE are concerned, however, the efforts to water down FOIA will prevent this kind of reporting in the future.

ANPA and ASNE believe that the Congress should take the following steps to preserve and strengthen FOIA. First, we support tough penalties against agencies that fail to meet the FOIA time limits for disclosure. Without these sanctions, Government agencies will have little incentive to comply with the 10-day limits enacted in 1974.

Second, Congress must resist efforts to create new exemptions from FOIA under section b(3) of the act. My own newspaper recently went to Federal court to challenge the Commerce Department's ruling that it could not release information on export licenses due to an alleged b(3) exemption in the Export Administration Act. One of our writers wanted to write an editorial on technology exports to the Soviet Union and Eastern bloc countries. He filed an FOIA request with the Commerce Department to obtain information on these companies allowed to export technologies to the East. The request was denied, citing an alleged b(3) exemption. Ironically, the Soviets know which American firms are doing business with them, but we could not get the information from our own Government for the benefit of the American public.

Along the line in this case, as many as 14 attorneys for the Government were assigned to oppose our request. Unfortunately, we lost the court case, but we felt so strongly about the issue that we took our case to Capitol Hill. In the last Congress, Senator DeConcini introduced legislation to overturn the court decision and to insure that the public has access to export licensing information.

Each year, we see more efforts to push through b(3) exemptions. NASA only recently asked Congress to create a b(3) exemption for unclassified technical data. It is time to put a stop to these backdoor attempts to undermine FOIA.

Mr. Chairman, we commend you for your scrutiny of new b(3) exemptions recently proposed by the Securities and Exchange Commission. The SEC wants to withhold from the public certain records obtained from foreign securities agencies. As you pointed out in a letter to the SEC Chairman, the 1986 FOIA amendments already give the SEC such authority, there is no need for yet another b(3) exemption.

Third, Congress must exercise aggressive oversight of the 1986 amendments to FOIA, to insure that Federal agencies are not using these largely technical changes to slow down the process of disclosure. Fee waivers were intended to give the media easy access to Government records, not to create another hoop through which the press must jump.

Congress should also consider taking steps to strengthen FOIA and bring the law into the computer age, including clarifying that Government records stored on computers are covered under FOIA.

In the Supreme Court's very recent decision in the *Reporters Committee* case, the Court foreshadowed the day when Government records stored on computers will be beyond the reach of the public. The public interest and access to Government computer records was dramatically demonstrated in the pages of USA Today in February. Responding to the public outcry concerning the savings and loan crisis, the paper obtained extensive data from Government computers and provided consumers with an analysis of the financial health of more than 11,000 savings and loans.

ANPA and ASNE believe that in view of the widespread use of computers by Government agencies, any interpretation of FOIA which limits this application to conventional written documents contradicts the principle of full disclosure.

Only recently, Mr. Chairman, Vice President Dan Quayle made no bones about the virtues of an unfettered flow of information. He said in a March 16 speech at the National Press Club, "An educated and informed public is the foundation of a sound democracy. I have often said that too much Government information is classified and that the public would appreciate our national security needs if more data were declassified and released."

In conclusion, Mr. Chairman, I want to thank you again for allowing me to testify and again commend you for holding this hearing. It has only been through similar vigilance that FOIA has survived for more than 20 years. Thank you.

Mr. WISE. Thank you very much, Mr. Murphy. You might be interested to know that NASA is again requesting that b(3) exemption.

[The prepared statement of Mr. Murphy follows:]

STATEMENT OF PAT MURPHY, PUBLISHER
OF THE ARIZONA REPUBLIC AND GAZETTE,
ON BEHALF OF THE AMERICAN NEWSPAPER PUBLISHERS ASSOCIATION
AND THE AMERICAN SOCIETY OF NEWSPAPER EDITORS
BEFORE
THE HOUSE SUBCOMMITTEE ON
GOVERNMENT INFORMATION, JUSTICE AND AGRICULTURE
HEARING ON THE FREEDOM OF INFORMATION ACT
APRIL 18, 1989

Mr. Chairman, my name is Pat Murphy and I am the publisher of the Arizona Republic and the Phoenix Gazette. I want to thank you and the members of the Subcommittee for inviting me to appear on behalf of the more than 1,400 members of the American Newspaper Publishers Association and the more than 950 members of the American Society of Newspaper Editors. We commend you for holding this hearing on an issue which is extremely important to the American press--the Freedom of Information Act.

I came to Washington from Phoenix, Arizona to send a clear message: the editors and publishers of America's hometown newspapers care about the Freedom of Information Act, we need the Freedom of Information Act, and we use the Freedom of Information Act. I am here because the quality of reporting in our nation's newspapers and our ability to keep the public informed has been threatened by repeated attacks on FOIA over the last eight years.

Some say that the stonewalling, the hassles, and the delay have made FOIA a useless tool, especially for the deadline-conscious newspaper business. We at ANPA and ASNE believe the solution is not to stop using FOIA, but to fix the problems. FOIA is far too valuable. In just the last few years, FOIA has helped reporters break major stories on the savings and loan scandal, the Space Shuttle disaster, and our own paper uncovered a McCarthy era investigation of Phoenix's own Jesse Owens, the great olympic champion.

The Newspaper Publishers and Editors propose that Congress adopt a four part strategy to improve compliance with FOIA as it is written and to consider certain changes in the law to bring FOIA into the computer age. First, ANPA and ASNE support tough penalties for failure to comply with the legal time limits for disclosure. Second, Congress must resist efforts to create new statutory exemptions from FOIA--exemptions which my own newspaper was forced to challenge in court. Third, Congress must continue to exercise vigorous oversight of agency compliance with FOIA. Finally, Congress should consider taking steps to ensure that, under FOIA, the press and public will have access to the vast number of government records stored on computer.

Mr. Chairman, during the 1980s, you and the Congressional supporters of FOIA kept decades of progress toward a more open government from being swept away. We have fought off attack after attack on FOIA--in the federal bureaucracy, in some corners of Congress, and even in the courts. We have been forced to adopt a defensive posture. The Newspaper Editors and Publishers believe that we must continue to resist these efforts to whittle away at FOIA. But, Congress must also take positive steps--steps to improve and update FOIA to keep up with the breathless pace of change in information technology.

While the previous Administration's record was one of resistance and even hostility to public access to government information, hopefully the new Administration will take its lead from the man at the top--President Bush. President Bush has been far more accessible to the press than his predecessor and is more likely than not to wander into the White House press room or call an impromptu news conference when a major news event is unfolding.

We in the press commend the President for his refreshing accessibility. But, we hope that the President and his Administration will take this new openness one step further and make it this Administration's policy to provide similar access to government records and information. There is no greater potential for embarrassment to any Administration than the harsh questions asked under the kleig lights at a White House press conference. Our new President has shown that he is not afraid to step into those lights. He has given the press and the American people a great degree of access to the highest levels of government.

Hopefully, his appointees will adopt the same sort of willingness to open up the inner workings of government--the agencies that affect people's lives every day.

Our recent experience, however, has not been nearly so promising. Mr. Chairman, as you know, it was only through vigorous Congressional oversight that the previous Administration complied with FOIA at all. Indeed, the very first act of the new attorney general under the last Administration was to issue a directive saying, in effect, "fight every FOIA disclosure request we have even the slightest chance of winning in court."

Reports of denials and unnecessary and illegal delays abound. As the General Accounting Office recently reported to you, the State Department took, on average, more than six months to turn around three-quarters of its FOIA requests. The law generally calls for turning over government records within ten days. In addition, the State Department simply terminated 200 FOIA requests without so much as giving a reason--something no federal agency has authority to do under the Act.

The numbers, however, do not tell the story nearly as well as the real life experience we in the newspaper business have with FOIA. Just a few examples of some of the stonewalling we face.

Delay and disregard for the time limits is the number one problem facing the press in its use of FOIA. Agency FOIA officers know how important deadlines are to the press and they have devised some very inventive ways to slow down the process.

A Louisiana newspaper was investigating corruption and financial abuse at a low income housing project in New Orleans. The reporter filed an FOI request with the Department of Housing and Urban Development in March of 1985. Within weeks, HUD wrote to the reporter asking her to provide file numbers, and specific information about the housing project which could only be found in HUD's own records. The agency would not release any information, the reporter was told, until she provided HUD with information she could not conceivably obtain. More than one year later and after a lengthy appeal, the reporter finally got the information she needed.

Residents of one Mississippi community learned first hand about the frustrations the press encounters with FOIA requests. As with many FOIA requests, the livelihood and health of real people was as much threatened by agency resistance to disclosure as was the people's right to an open government.

In 1986, the Environmental Protection Agency found 2,000 barrels of toxic chemicals buried deep below a dumping site in Columbia, Mississippi. This discovery came years after the EPA removed 400 barrels of chemicals from the surface of the dump in a Superfund cleanup and declared the area safe.

After finding the new barrels of toxic chemicals, EPA conducted a new round of tests, but then refused to release its conclusions about whether the area was safe. Needless to say, the people who lived around the dump wanted to know whether it was safe to stay in their homes.

The local paper, the Hattiesburg American, filed a FOIA request with the EPA to provide this vital information to the worried community. The EPA took eight months to release its conclusion, claiming that it needed to run "quality assurance" tests on the toxic waste report. Without FOIA, the people of Columbia Mississippi would have had to wait in the dark even longer.

Federal agencies have even found ways to use the 1986 Amendments to FOIA, which were supposed to streamline disclosure procedures, to create new obstacles for the news media. Using language in the amendments, agency FOIA officers slow down disclosure by forcing newspapers to first prove that they are in fact newspapers before granting fee waivers.

A small town Vermont newspaper with a circulation of 7,000 wanted information from the CIA about its recruiting efforts at the local university. The CIA refused to provide the information and waive its substantial disclosure fees, claiming that paper had not demonstrated the public purpose of its request. The Agency then asked the paper for circulation information and other data to show that it was actually a newspaper. One more opportunity for delay.

Let me give you an example of a problem that we faced at the Republic. In 1985, an FBI agent was tragically killed in Phoenix--killed by another agent who mistook the agent as an individual involved in a crime. This was the first time in the Bureau's history that one FBI agent accidentally killed another agent. Our reporter filed a FOIA request with the FBI to find out what went wrong. It was only after repeated denials and $25,000 in legal fees that we could provide our readers with an explanation.

Mr. Chairman, in spite of these problems, FOIA remains an invaluable tool to the press. With your permission, I would like to submit for the record a list of stories which were broken by reporters who made FOIA requests. I would like to highlight just a few of the stories for the Subcommittee to show how valuable FOIA is, and how important it is that compliance with FOIA be strengthened.

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Mr. Chairman, in your own State of West Virginia, the Charleston Gazette discovered, through a FOIA request, that the FBI had accumulated more than 40 years of records on the Gazette. FBI records showed that the records were kept because the paper was "hostile" to the FBI. The Gazette ran the story in 1976 and received Sigma Delta Chi's First Amendment Award.

Nearly eight years ago, the Wall Street Journal found that ten percent of the nation's S&Ls were on the government's troubled list. The Journal got hold of the list through a FOIA request and also found out that the federal S&L regulators were planning to scrap their efforts to keep track of troubled thrifts. Thanks in part to that story, the federal regulators continued to monitor the health of our nation's S&Ls. Who knows how much worse the current S&L crisis would have been, if federal regulators went ahead with their original plan to look the other way.

Another example: in March of 1986, a Maryland weekly discovered, through a FOIA request, that one of the contractors who helped build the Space Shuttle Challenger's external fuel tank had dismissed four workers for using drugs on the job. While the dismissed employees apparently did not actually work on the Challenger's fuel tank, the story drew attention to some of the lax procedures which may have contributed to the Shuttle disaster.

Finally, let me tell you about a story that our paper broke about a hometown hero, Jesse Owens. Through a FOIA request to the FBI, our reporter learned that during the 1950s the FBI investigated Owens for unAmerican activities. The FBI believed that Owens, who won four gold medals for the U.S. at the Berlin Olympics in 1936 and turned Hitler's Aryan Race theory on its head, was a subversive. Apparently, J. Edgar Hoover thought Owens' participation in the National Negro Congress was unAmerican. We found that the FBI investigated Jesse's business associations, his sex life and those of his wife, his parents, and three daughters. Newspaper reporting using FOIA will help ensure that the "good old days" of Hoover's FBI do not return for a second run.

Mr. Chairman, these are but a few FOIA success stories. ANPA and ASNE are concerned, however, that efforts to water down FOIA will prevent this kind of reporting in the future--reporting which touches the lives of real people and which acts as a check on excessive government intrusion into our lives.

Proposals to Strengthen FOIA

Mr. Chairman, as you know, you have a big job ahead of you if we are to preserve FOIA. The Freedom of Information

Act, enacted more than 20 years ago, was based on the following principles: 1) that the public would have access to all government records, unless a specific harm would result from disclosure; 2) that when a question about confidentiality arose, the presumption was in favor of disclosure; and 3) that records would be disclosed in a timely manner.

ANPA and ASNE believe that Congress should take the following steps to preserve these principles.

First, we commend to the Committee the proposals introduced by Congressman Kleckza in the last Congress and those introduced by Senator Leahy in the 99th Congress. Namely, ANPA and ASNE support tough penalties against agencies that fail to meet the FOIA time limits for disclosure. Without these sanctions, as well as the provision of attorneys fees, government agencies will have little incentive to comply with the ten day limit enacted in 1974. As I said earlier, Mr. Chairman, the failure of agencies to disclose information in a timely manner is the most frustrating FOIA problem which the press encounters.

Second, Congress must resist efforts to create new exemptions from FOIA under Section b(3) of the Act. Section b(3) generally allows an agency to deny disclosure of information where disclosure of that information is specifically prohibited by another statute. So-called b(3) exemptions have multiplied over the last few years.

My own newspaper recently went to federal court to challenge the Commerce Department's ruling that it could not release information on export licenses due to an alleged b(3) exemption in the Export Administration Act.

One of our editorial writers, Richard Lesser, wanted to write an editorial on technology exports to the Soviet Union and Eastern bloc countries. He filed an FOIA request with the Commerce Department to obtain information on those companies allowed by the government to export technology to Eastern Europe and Russia. The request was denied, citing vague language in the Export Administration Act which Commerce construed as a b(3) exemption. Ironically, the Soviets know which American firms are doing business with them, but we could not get that information from our own government.

Unfortunately, we lost the court case at trial and on appeal. We felt so strongly about this issue that we took our case to Capitol Hill. In the last Congress, Senator DeConcini introduced legislation, S. 2390, to overturn the court decision and ensure that the public has access to export licensing information. Hopefully, Congress will approve a similar bill during this Congress.

While we work to correct the problems with the Export Administration Act, other efforts to push through new b(3) exemptions continue.

As recently as the beginning of this month, NASA asked Congress to approve a separate bill to create a b(3) exemption for unclassified technical data submitted under the Export Control Act. Contractors who do business with NASA are required to gain export licenses from the Commerce Department to prevent certain technology from reaching the Eastern bloc. NASA asserts that FOIA allows Eastern nations to obtain from government records what they cannot gain by purchasing technology directly from NASA contractors. No one wants sensitive technology to fall into the wrong hands. But, NASA's proposal paints too broad a brush. There are already rules on the books to keep NASA's technology secure.

In addition, the Commerce Department sought in the last Congress the enactment of legislation exempting the federal laboratories from disclosure.

Mr. Chairman, b(3) exemptions run counter to the basic underlying principles of FOIA--that the American people have a right to know how their government collects information and reaches decisions. It is time to turn back the tide of these backdoor attempts to undermine FOIA.

One way to accomplish this goal would be to amend the rules of the House and Senate to require that any legislation that includes provisions which restrict access to information be sequentially referred to the Committees responsible for FOIA oversight.

Mr. Chairman, we commend you for your scrutiny of a new b(3) exemption recently submitted to Congress by the Securities and Exchange Commission. The SEC is seeking authority to withhold records obtained from foreign securities agencies if those agencies object to disclosure of the information. As you pointed out in a letter to SEC Chairman David Ruder, the 1986 FOIA Amendments already give the SEC such authority. There is no need for yet another b(3) exemption.

We are grateful for your leadership, Mr. Chairman. You are the first member of Congress to question the SEC's attempt to place information beyond the reach of the press and public.

Third, Congress must exercise aggressive oversight of the 1986 Amendments to FOIA, to ensure that Federal agencies are not using these largely technical changes to slow down the process of disclosure. Fee waivers were intended to give the media easy access to government records, not to create another hoop through which the press much jump.

Mr. Chairman, these are just a few of the steps which ANPA and ASNE believe Congress should take to hold the line on efforts to weaken FOIA.

In a separate category, Congress should also consider taking steps to strengthen FOIA and bring the law into the computer age.

Congress should consider changes in FOIA to make it clear that the vast number of government records stored on computers are covered under FOIA. In the Supreme Court's very recent decision in the Reporters Committee case, the Court foreshadowed the day when government records stored on computers will be beyond the reach of the public.

FOIA is based on the full disclosure of government records. When FOIA was first enacted more than 20 years ago, the great majority of those records were stored on paper. The emergence of the computer will one day make paper storage of records obsolete. ANPA and ASNE believe that in view of the widespread use of computers by government agencies, any interpretation of FOIA which limits its application to conventional written documents contradicts the basic FOIA principle of full disclosure.

Unfortunately, not all government agencies, nor all courts, share our view. Therefore, Congress should use its oversight function to ensure that the press and public have maximum access to records stored on government computers and, if necessary, consider legislation to clarify that computer records are "records" subject to disclosure under FOIA.

The public interest in access to government computer records was dramatically demonstrated in the pages of USA Today in February. Responding to the public outcry concerning the S&L crisis, the paper obtained extensive data from government computers and provided consumers with an analysis of the financial health of more than 11,000 thrift institutions.

Second, an effort should be made to clarify that minor computer reprogrammings are searches as defined by FOIA. In addition, agencies should be required to provide records in the format in which they were requested. It is simply not in keeping with the FOIA principles for an agency to respond to a request by disclosing information which is undecipherable and therefore useless to the requester.

In conclusion, Mr. Chairman, I want to thank you again for allowing me to testify. I again commend you on holding this hearing. It has only been through similar vigilance that FOIA has survived for more than 20 years. Your Committee must continue to act as a guardian of the people's right to know how their government works. It is a big task and an important one. Newspaper editors and publishers are committed to doing all that we can to assist you in your new role as Chairman. Thank you.

Mr. WISE. Mr. McMasters.

STATEMENT OF PAUL K. McMASTERS, DEPUTY EDITORIAL DIRECTOR, USA TODAY, AND NATIONAL CHAIRMAN, FREEDOM OF INFORMATION COMMITTEE, SOCIETY OF PROFESSIONAL JOURNALISTS, ACCOMPANIED BY DAVID GREENFIELD, EDITOR, CHARLESTON DAILY MAIL

Mr. MCMASTERS. Thank you, Mr. Chairman. I will shorten my remarks also, but you have a copy of our full text.

I thank the subcommittee for this opportunity to comment on the state of the Freedom of Information Act and, more specifically, on whether the act is efficiently and effectively achieving the purpose its drafters intended more than 20 years ago.

My name is Paul McMasters. I am here today as the national chairman of the Society of Professional Journalists' Freedom of Information Committee.

As you noted, Mr. Chairman, I'm accompanied by David Greenfield, who is editor of the Charleston, WV Daily Mail, who flew in this morning from Charleston to demonstrate that the interest in the public discussion of freedom of information issues extends beyond the Washington Beltway. Mr. Greenfield is just one of the thousands of reporters and editors across the country who have made an impressive commitment to increasing the free flow of information that reaches the public every day.

As you may know, Mr. Chairman, the Society of Professional Journalists worked side by side with retired Representative John E. Moss to draft and enact the original Freedom of Information Act in 1966. Since that time, the society has only increased its commitment to the FOIA. Many of our members have testified before this subcommittee, and we always have worked closely with the subcommittee to improve the FOIA and protect it from those who, though perhaps well-intentioned, mistakenly believe that the secret governing leads to better government.

The society participated in the drafting of the 1976 and 1986 amendments to the FOIA and over the years has proposed legislation of its own. Indeed, the language from the 1986 fee waiver amendments is similar to that contained in a bill previously drafted by the society and introduced in the House by Representative Gerald Kleczka.

Mr. Chairman, the significance of the work performed by this subcommittee cannot be overstated. The Freedom of Information Act is important to the society and its members, not only because it has become a tool of our trade, but also because we believe that the act is vital to a living, breathing democracy.

Our members have not forgotten the days before the FOIA was enacted, when Government agencies were under no obligation to provide information to the public and therefore most often refused to do so. In the days before the FOIA, it was not uncommon for an agency to withhold information that had been the subject of a press release only weeks before. Now, however, news reporters can use the FOIA to require the agencies to disclose many kinds of important governmental information.

For example, several news organizations used the FOIA to gain access to terms of the settlement agreements resolving lawsuits threatened or filed by the families of the four astronauts killed in the Challenger explosion.

In other cases, the Pittsburgh Press, through an FOIA request, obtained several documents from the Navy that revealed that the inflatable lifeboats used by the Navy had a 100 percent failure rate during spot testing. Documents also showed that the Navy had been aware of this problem for almost a year before the news report was published and that it had not informed the fleet units about the defect.

In one of the most striking FOIA success stories of recent years, the Center for Constitutional Rights obtained approximately 1,200 pages of information demonstrating that the FBI had monitored more than 100 individuals and groups, including college students and church organizations, simply because those individuals and groups had exercised their first amendment right to speak out against Reagan administration policies in Central America. The documents also revealed that the FBI had hired informants to infiltrate some of these groups.

Not every reporter's use of the FOIA, however, yields such dramatic results. For every success story that we read, we hear about two horror stories. FOIA requests that go unanswered for weeks, months, or even years, unjustified challenges to a requestor's eligibility for fee waivers and costly litigation undertaken to obtain information clearly releasable under the act.

These problems and others like them persist. But perhaps none is as frustrating as the continuing inability to obtain documents within the statutory 10-day period. While some agencies, such as the Department of Health and Human Services, generally make every effort to process FOIA as expeditiously as possible, other agencies, such as the State Department and the FBI, seem to delight in their dilatory tactics.

While almost every journalist knows of one or more horror stories, we are not aware that any effort has been undertaken to collect, quantify, and study the problems that journalists who use the FOIA typically encounter. The society, therefore, has decided to conduct such a study this year.

Last year the society compiled and published a survey entitled Media in Litigation 1988, which demonstrated that access litigation, rather than libel cases, likely will command the resources, money and otherwise, of journalists and media companies well into the 1990's.

Our study this year, which we envision titling Report From the FOIA Front, will survey FOIA users across the Nation to determine when the act works and when it does not. More important, we hope to learn why the act often does not accomplish the purpose for which it was designed.

Mr. Chairman, we look forward to the challenges of completing this ambitious project. We hope that journalists, authors, historians, and other FOIA users throughout the country will cooperate with us in our attempt to make this study as comprehensive as possible.

We also would be grateful for any assistance that you, the members of the subcommittee and your subcommittee staff can provide. We anticipate publishing the report in late 1989, at which time we hope to be in a position to propose legislative solutions to the problems that we have identified. Our goal, which we hope that you share, is to revitalize the FOIA so that every requester, from the local reporter writing about the environmental impact of a new Federal project, to the historian researching the assassination of a public figure, will not face unnecessary delay or undeserved confrontation in gathering important information about his or her Government.

The Society of Professional Journalists will continue to work toward this goal and we hope that our upcoming study will help make that goal more quickly attainable for all of us.

Mr. Chairman and members of the subcommittee, thank you for your kind attention. Mr. Greenfield and I will be happy to answer any questions that you have later.

[The prepared statement of Mr. McMasters follows:]

Testimony of
PAUL K. McMASTERS
Society of Professional Journalists'
Freedom of Information Committee
and Deputy Editorial Director of
USA Today
before the
House Subcommittee on Government Information,
Justice and Agriculture
April 18, 1989

Thank you, Mr. Chairman and members of the Subcommittee, for providing me this opportunity to comment on the state of the Freedom of Information Act and, more specifically, on whether the Act is efficiently and effectively achieving the purposes its drafters intended more than 20 years ago.

My name is Paul K. McMasters. I am here today as National Chairman of the Society of Professional Journalists' Freedom of Information Committee. I am accompanied by David Greenfield, Editor of the Charleston Daily Mail, who flew in this morning from Charleston, West Virginia to demonstrate that the interest in the public discussion of freedom of information issues extends beyond the Washington Beltway. Mr. Greenfield is just one of the thousands of reporters and editors across the country who have made an impressive commitment to increasing the free flow of information that reaches the public every day. Also with me this morning is the Society's legal counsel from Baker & Hostetler in Washington, D.C.

Founded in 1909 as Sigma Delta Chi, the Society is the largest and oldest organization of journalists in the United States with nearly 20,000 members in all branches of the news media, print and broadcast. Personally, I have been a working reporter and editor for the past 29 years, and am quite familiar with the exciting successes and frustrating failures that come with frequent use of the FOIA. I am currently the Deputy Editorial Director of USA Today and also serve on the Freedom of Information Committee of the American Society of Newspaper Editors.

As you may know, Mr. Chairman, the Society of Professional Journalists worked side-by-side with retired Rep. John E. Moss to draft and enact the original Freedom of Information Act in 1966. Since that time, the Society has only increased its commitment to the FOIA. Many of our members have testified before this Subcommittee, and we always have worked closely with the Subcommittee to improve the FOIA and protect it from those who, though perhaps well intentioned, mistakenly believe that secret governing leads to better government. The Society participated in the drafting of the 1976 and 1986 amendments to the FOIA and over the years has proposed legislation of its own. Indeed, the language from the 1986 fee-waiver amendments is similar to that contained in a bill previously drafted by the Society and introduced in the House by Rep. Gerald Kleczka.

In recent years, the Society has had the distinct pleasure of working with former Subcommittee chairman Glenn English. During his tenure as chairman, Rep. English was a strong and effective leader and an ardent supporter of the Freedom of Information Act. Rep. English's insight, dedication, and gentle wit on more than one occasion helped all of us better understand not only the issues before us, but also their importance to a democratic society. We thank Rep. English for his years of worthy service and we look forward to continuing our relationship with him in his new role on the Subcommittee. We also are grateful that Robert Gellman, the Subcommittee's Chief Counsel, has chosen to remain with the Subcommittee as we prepare to enter the 1990s. Mr. Gellman has proven to be an invaluable and tireless resource in freedom of information issues, and we appreciate his patience in what some may consider the unenviable task of working with an array of different media groups.

Mr. Chairman, the significance of the work performed by this Subcommittee cannot be overstated. The Freedom of Information Act is important to the Society and its members not only because it has become a tool of our trade but also because we believe that the Act is vital to a living, breathing democracy. Our members have not forgotten the days before the FOIA was enacted, when government agencies were under no obligation to provide information to the public and therefore most often refused to do so. In the days before the FOIA, it was not uncommon for an agency to withhold information that had been the subject of a press release only weeks before. Now, however, news reporters can use the FOIA to require the agencies to disclose many kinds of important governmental information. For example, several news organizations used the FOIA to gain access to terms of the settlement agreements resolving lawsuits threatened or filed by the families of the four astronauts killed in the Challenger explosion.

In another case, the Pittsburgh Press, through a FOIA request, obtained several documents from the Navy that revealed that the inflatable life boats used by the Navy had a 100% failure rate during spot testing. The documents also showed that the Navy had been aware of this problem for almost a year before the news report was published and that it had not informed the fleet units about the defect. And in one of the most striking FOIA success stories of recent years, the Center for Constitutional Rights obtained approximately 1,200 pages of information demonstrating that the FBI had monitored more than 100 individuals and groups, including college student and church organizations, simply because those individuals and groups had exercised their First Amendment right to speak out against Reagan administration policies in Central America. The documents also revealed that the FBI had hired informants to infiltrate some of these groups.

Not every reporter's use of the FOIA, however, yields such dramatic results. For every success story that we read, we hear about two horror stories: FOIA requests that go unanswered for weeks, months, or even years, unjustified challenges to requesters' eligibility for fee waivers, and costly litigation undertaken to obtain information clearly releasable under the Act. These problems and others like them persist, but perhaps none is as frustrating as the continuing inability to obtain documents within the statutory 10-day period. While some agencies, such as the Department of Health and Human Services, generally make every effort to process FOIA requests as expeditiously as possible, other agencies, such as the State Department and the FBI, seem to delight in their dilatory tactics.

While almost every journalist knows of one or more horror stories, we are not aware that any effort has been undertaken to collect, quantify, and study the problems that journalists who use the FOIA typically encounter. The Society, therefore, has decided to conduct such a study this year. Last year, the Society compiled and published a survey entitled "Media Litigation '88," which demonstrated that access litigation, rather than libel cases, likely will command the resources--money and otherwise--of journalists and media companies well into the 1990s. Our study this year, which we envision titling "Report from the FOIA Front," will survey FOIA users across the nation to determine when the Act works and when it does not. More important, we hope to learn why the Act often does not accomplish the purposes for which it was designed.

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Mr. Chairman and members of the Subcommittee, thank you for your kind attention. Mr. Greenfield and I will be happy to answer any questions that you may have.

Mr. Wise. Mr. Greenfield.

Mr. Greenfield. No statement, just prepared to answer questions.

Mr. Wise. And Ms. Kirtley.

STATEMENT OF JANE E. KIRTLEY, EXECUTIVE DIRECTOR, REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

Ms. Kirtley. Thank you, Mr. Chairman.

As you know, I'm executive director of the Reporters Committee for Freedom of the Press, which is a voluntary unincorporated association of working news reporters and editors throughout the United States. We devote our legal and research efforts to defending the first amendment and FOIA rights of the news media to both gather and disseminate information.

We have an FOIA service center which was created as a special project about 10 years ago, which provides daily cost-free assistance to reporters, editors, freelancers, and others who encounter problems using the FOIA and other Federal and State sunshine laws.

We publish a guide book on how to use the Federal FOIA; it's now in its sixth edition, and have just completed a comprehensive compendium of State open government law, which we call "Tapping Officials' Secrets," and which has been very well received in the media community.

Because we handle hundreds of calls every year from reporters and editors, we are uniquely situated to comment on the day-to-day frustrations that those who try to use the FOIA will face. We've testified on that a number of times and I hope we'll have an opportunity to do that in the future.

But today I'm really here in the unenviable position of speaking as a thwarted FOIA requestor myself. My story may not be typical, but I think it does illustrate many of the problems that have been faced by members of the press and the public. And perhaps more importantly, the resolution of our experience may well be a harbinger of problems that are yet to come.

More than 10 years ago, the Reporters Committee, together with CBS reporter Bob Schakne, filed requests with the FBI seeking disclosure of the criminal history records of four members of the Medico family. They were principals in a company called Medico Industries, which had been identified by the Pennsylvania Crime Commission as a legitimate business dominated by organized crime. Medico Industries was in the public eye because it had been a defense contractor, and was implicated in the then developing scandal that involved Congressman Daniel Flood.

We asked the FBI to let us see its records of any arrests, indictments, acquittals, convictions, or sentences, the so-called rap sheets of the four Medico brothers. I want to point out that we were not asking for any law enforcement investigatory information. We were asking only for information publicly available at its source. In other words, all we wanted was the information that was open to inspection in police stations and court houses throughout the country and that had been compiled and assembled in a computer data base by the FBI at taxpayers' expense.

The FBI refused to release the information they maintained on the Medicos until three of the four of them died, at which point they did give us that information. The fourth, Charles Medico's, records are still secret on the ground that disclosure of this information, publicly available at its source, might unreasonably invade his personal privacy.

We were puzzled and frustrated by the agency's response, which seemed to us to be both illegal and illogical. How in the world could Charles Medico have any possible expectation of privacy in his criminal history record? How could publicly available data about events which were of public interest possibly be exempt from disclosure?

Unlike a lot of FOI requestors, we had the luxury of being able to retain a lawyer on a pro bono basis who helped us challenge the FBI's decision. I won't bore you with all of the details, but suffice it to say that it took us until 1987 to get to the Federal Court of Appeals here in the District of Columbia, who ruled in our favor on the right of access to this information. The Government appealed that decision to the panel, who then issued a revised decision essentially saying that the trial court had to go back and determine whether the records that were sought were in fact open to inspection in their State of origin, and if they were, we would be able to get them.

At that point, the Government asked the Supreme Court to review the case. And as I'm sure you all know, the High Court reversed just this past March, on the 22nd, holding that the public has no right to see criminal history records on private individuals that are held by the FBI.

Now what does that mean? What it means is that if a schoolbus driver is arrested for drunken driving 18 times in 15 jurisdictions, that is no longer the public's business. If a high school principal or a coach has been convicted of child molestation somewhere in the United States, the public cannot learn about it this way. The individual's privacy interest is deemed to be stronger than the right of the public to know. This seems incredible to me. I think it is. Even the ACLU, which has been labeled as the watchdog of citizen privacy concerns, believes that the Supreme Court went too far in this decision.

In addition to the direct impact that I've just outlined here in terms of access to criminal information, I'd like to focus briefly on two particularly troubling aspects of the decision as we see it.

First, the opinion by Justice Stevens emphasized that there is a stronger personal privacy interest implicated by disclosure of the rap sheet itself than in the scattered disclosure of the pieces of public information contained in the rap sheet. As he put it, plainly, there is a vast difference between the public records that might be found after a diligent search of court house files, county archives, and local police stations around the country, and a computerized summary located in a single clearinghouse of information. What Justice Stevens didn't do for us is tell us what that difference is.

I can see that there is a physical distinction between papers in a file drawer and entries in a computer data base, and certainly there's a difference in the effort and time it takes to retrieve them. But I do not concede, and I submit that it defies logic to suggest that translating data from one form to another alters their inherently public nature. A criminal conviction that is a part of a public record remains a matter of public interest forever, no matter how it is stored or where it is stored.

As Justice Scalia suggested during oral argument of this case, an individual's expectation of nondiscovery of criminal history information may change if the information becomes readily accessible through the use of electronic storage and retrieval. But surely the privacy interest, if there is any, in the actual information does not change because the form of the retention of the data changes.

It is very disturbing to contemplate the implications of this distinction that was drawn, and I think it was drawn incorrectly by the Supreme Court. In our view, the opinions suggest a total lack of appreciation for the realities of information storage and retrieval today.

As the members of this subcommittee know, many Government entities, including OMB, the Administrative Conference of the United States, the Commerce Department, National Archives, and others are struggling to devise workable guidelines for gathering and disseminating information in electronic formats. In the meantime, though, some agencies are acting as if the FOI Act doesn't apply to electronic records because the act doesn't distinguish electronic records from paper records.

It's a matter of fact, of course, that we're in the midst of the computer age. And like it or not, electronic data bases are in fact the file cabinets of the present as well as the future. If meaningful rights of access to Government information are to be maintained, it is essential that workable policies for insuring requester retrieval of electronically stored information be established. The access has to be timely, not prohibitive in cost, and it has to be user friendly.

But apart from these practical considerations, it's equally important that the Supreme Court's language in our case not be used to justify the refusal to disclose computerized information that would have been readily available as a paper document out of some misplaced concept of protecting the individual against the power of Big Brother.

If we're willing to concede that the proper functioning of the Government justifies collection and maintenance of data, it is doubly important that the system be subject to public scrutiny. The specter or a police force maintaining secret files on the American people is a chilling prospect, and it's more commonly attributed to totalitarian systems of government than to our own.

As citizens, our only safeguard against Government abuse of the vast collections of information now electronically gathered and stored is through continued public vigilance and oversight. Unfortunately, the door to that file cabinet has been locked, and the Supreme Court has thrown away the key.

Also very disturbing is the Supreme Court's extremely crabbed interpretation of the core purpose of the FOI Act. The High Court, which cited language from the 1986 fee waiver provisions, emphasized that the central purpose of the act is to ensure that the operations and activities of Government are open to public scrutiny. The Court said that compared with the strong privacy interest found in the rap sheet information, the interest in disclosure is at it's lowest point if the information sought is in the Government's control simply as a compilation rather than as a record of what they called what the Government is up to. The Court found that the rap sheets, because they would be unlikely to reveal anything about Defense Department conduct, would not therefore contain the kind of information that would promote the public oversight for which they said Congress enacted FOIA.

The implications of this are staggering. It invites Government agencies to deny public interest fee waivers, and perhaps in some instances to deny access to the huge collections of information that are gathered and retained electronically at public expense. A case involving this issue, the *Department of Justice* v. *Tax Analysts,* is going to be argued on April 24 in the Supreme Court.

All I can say on that is that in the course of performing its duties, Government agencies are collecting lots of data. For instance, as the Justice Department is arguing in this case, their Tax Division does collect hundreds of Federal district court decisions. HHS collects drug abuse and overdose information from hospital emergency rooms all over the country. The NRC compiles all newspaper and magazine articles dealing with nuclear energy production. All of this information is presently available to the public under the FOI Act. Some agencies even make it available in public reading rooms. It is at least arguable, though, that it does not directly describe what the Government is up to. It is valuable information, though, and it's obviously information of interest to the public.

I believe that Congress didn't create, nor did it contemplate an exemption for compilations of public records that are contained in agency files when there is no overwhelming public interest in denying access. Government agencies must not be permitted to circumvent this mandate, either through outright denials or through the more insidious but equally pervasive refusals to grant public interest fee waivers on the grounds that information does not clearly relate to what the Government is up to.

Thank you for giving me the opportunity to testify today.

Mr. WISE. Thank you very much.

[The prepared statement of Ms. Kirtley follows:]

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

Legal Defense Fund
First Amendment Clearinghouse
FOI Service Center

Estab. 1970
Suite 300 · 800 18th Street, N.W. · Washington, D.C. 20006 · Tel. (202) 466-6313

Testimony of

THE REPORTERS COMMITTEE FOR FREEDOM OF THE PRESS

before the

Government Information, Justice and Agriculture
Subcommittee

of the Committee on Government Operations

United States House of Representatives

concerning

Current Issues Relating to

The Freedom of Information Act

by

Jane E. Kirtley, Esq.
Executive Director

April 18, 1989

Steering Committee

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Jane E. Kirtley
Executive Director

*Identification purposes only

Thank you, Mr. Chairman, and members of the subcommittee, for your invitation to testify today.

My name is Jane Kirtley, and I am the Executive Director of the Reporters Committee for Freedom of the Press. I am accompanied by Rebecca Daugherty, who directs our Freedom of Information Service Center.

The Reporters Committee is a voluntary, unincorporated association of working news reporters and editors throughout the United States. We devote our legal and research efforts to defending the First Amendment and freedom of information rights of the news media to gather and disseminate information. Our FOI Service Center, created as a special project ten years ago, provides daily, cost-free assistance to reporters, editors, freelancers, and others who encounter problems using the Freedom of Information Act and other federal and state sunshine laws. We also publish a guidebook to How to Use the Federal FOI Act, now in its Sixth Edition, and have just completed a comprehensive compendium of state open government law, Tapping Officials' Secrets.

Because the FOI Service Center of the Reporters Committee handles hundreds of calls each year from reporters and editors around the country, we are uniquely situated to comment on the day-to-day frustrations of those attempting to use the Freedom of Information Act. We have frequently testified on these matters before this subcommittee, and I hope we will be invited to do so in the future.

Today, however, I am in the unenviable position of speaking to you as a thwarted FOIA requester myself. While my story may be unusual, it is illustrative of many of the problems faced by members of the press and public. In addition, the resolution of this experience may well be a grim harbinger of problems yet to come.

More than ten years ago, the Reporters Committee, together with CBS reporter Robert Schakne, filed requests with the FBI seeking disclosure of the criminal history records of four members of the Medico family, principals in a company, Medico Industries, identified by the Pennsylvania Crime Commission as a legitimate business dominated by organized crime. Medico Industries had been a defense contractor, and was implicated in the then-developing scandal involving Congressman Daniel Flood.

We asked the FBI to let us see its record of any arrests, indictments, acquittals, convictions, and sentences -- so-called "rap sheets" -- for any of the four Medicos. We did not ask for any law enforcement investigatory information, and requested only information that was publicly available at its source. In other words, all we asked for was information that was open to inspection in police stations and court houses throughout the country, and that had been compiled and assembled in a computer database paid for at taxpayers' expense.

In fact, in the intervening years, the FBI gave us information on three of the four Medicos -- after their deaths. But they refused to release the information they maintained on the fourth, Charles Medico, on the ground that it might unreasonably invade his personal privacy.

Like many FOIA requesters, we were puzzled and frustrated by the agency's response, which seemed to us to be both illegal and illogical. How could Charles Medico have any possible expectation of privacy in his criminal history record? How could publicly-available data about public events which were of public interest possibly be exempt from disclosure?

Unlike may FOIA requesters, we were able to retain a lawyer on a pro bono basis to challenge the FBI's decision. After lengthy trial court proceedings, in which the government prevailed, we took the case to the U.S. Court of Appeals in the District of Columbia. In 1987, the appellate court reversed, finding that an individual has, at most, only a minimal privacy interest in public-record criminal history information. On rehearing, the Court of Appeals revised its ruling slightly, instructing the trial court to go back and determine whether the records sought were open to public inspection in their state of origin. If so, the court said, any privacy interest would have "faded," and the public interest in disclosure would outweigh it.

Undaunted, the government asked the U.S. Supreme Court to review the case, and as you probably are aware, the high court reversed this past March, holding that the public has no right to see criminal history records on private persons held by the FBI.

What does this mean in real terms? If a school bus driver is arrested for drunken driving 18 times in 15 jurisdictions, that is no longer the public's business. If a high school principal or coach has been convicted of child molestation somewhere in the United States, the public cannot learn about it. The individual's privacy interest is deemed to be stronger than the right of the public to know. It seems incredible. It is. Even the ACLU, self-proclaimed watchdog of citizen privacy concerns, believes that the Supreme Court went too far.

But in addition to the direct impact of this decision on access to criminal information, I would like to focus briefly on two particularly troubling aspects of the Supreme Court's ruling.

First, the opinion by Justice Stevens emphasized that there is a stronger personal privacy interest implicated by disclosure of a rap sheet itself than in "scattered" disclosure of the pieces of public information contained in a rap sheet.

As Justice Stevens put it, "Plainly there is a vast difference between the public records that might be found after a diligent search of courthouse files, county archives, and local police stations throughout the country and a computerized summary located in a single clearinghouse of information." What he did not explain is what this difference is.

While we concede that there is a physical distinction between paper records in a file drawer and entries in a computer database, as well as in the effort and time required to retrieve them, we do not concede -- and, I submit, it defies logic to suggest -- that translating data from one form to another alters their inherently public nature. A criminal conviction that is a part of the public record remains a matter of public interest forever, no matter in how it is stored.

As Justice Scalia suggested during oral argument of this case, an individual's expectation of non-discovery of a criminal history record may change if the information becomes more readily accessible through the use of electronic storage and retrieval systems. But surely the privacy interest, if any, in the actual information remains unchanged.

It is very disturbing to contemplate the implications of the distinction drawn, we believe incorrectly, by the Supreme Court. In our view, the high court's opinion suggests a total lack of appreciation for the realities of information storage and retrieval today.

As members of this subcommittee know, many government entities, including the Office of Management and Budget, the Administrative Conference of the United States, the Department of Commerce, and the National Archives and Records Administration are presently struggling to devise workable guidelines for gathering and disseminating information in electronic formats. Meanwhile, some agencies act as if the federal Freedom of Information Act doesn't apply to electronic records because the Act doesn't distinguish electronic records from paper records.

We are in the midst of the computer age, and, like it or not, electronic databases are the "file cabinets" of the present, as well as of the future. If meaningful rights of access to government information are to be maintained, it is essential that workable policies for insuring requester retrieval of electronically stored information be established. Such access must be timely, not prohibitive in cost, and "user friendly."

But apart from these practical considerations, it is equally important that the Supreme Court's language in this case should not be used to justify the refusal to disclose computerized information that would have been readily available as a paper document, out of some misplaced concept of protecting the individual against the power of "Big Brother."

If we as a society are willing to concede that the proper functioning of the government justifies collection and maintenance of data, it is doubly important that the system be subject to public scrutiny. The specter of a police force maintaining secret files on the American people is a chilling prospect, more commonly attributed to totalitarian systems of government than our own. As citizens, our only safeguard against government abuse of the vast collections of information now electronically gathered and stored is through continued public oversight. Unfortunately, the door to the file cabinet has been locked, and the Supreme Court has thrown away the key.

Also very disturbing is the Supreme Court's extremely crabbed interpretation of the core purpose of the FOI Act. The high court, citing language from the fee waiver provisions, emphasized that the central purpose of the Act is to ensure that the operations and activities of the government are open to public scrutiny. It stated that, compared with the strong privacy interest it found in the rap sheet information, the interest in disclosure is "at its nadir" if the information sought is in the government's control as a compilation, rather than as a record of "what the Government is up to." The court found that the rap sheets would be unlikely to reveal anything about Defense Department conduct, and would therefore not contain information promoting the kind of public oversight for which Congress enacted FOIA.

The implications of this language are staggering. It invites government agencies to deny public interest fee waivers, and perhaps, in certain instances, to deny access to the huge collections of information gathered and retained at public expense. A case involving this very issue, Department of Justice v. Tax Analysts, will be argued in the high court on April 24.

In the course of performing its duties, government agencies collect many kinds of data. For instance, the Justice Department's Tax Division collects hundreds of federal district court decisions. The Department of Health and Human Services collects drug abuse and overdose information from hospital emergency rooms throughout the country. The Nuclear Regulatory Commission compiles technical reports, licensing information, and all newspaper and magazine articles dealing with nuclear energy production. All of this information is available to the public under the FOI Act. Some agencies routinely make it available in public reading rooms. It is at least arguable that it does not directly describe "what the Government is up to." But it is valuable information, and obviously it is information of interest to the public.

Congress never created, nor did it contemplate, an exemption for compilations of public records contained in agency files where there is no overwhelming interest in denying access to that information to the public. Government agencies must not be permitted to circumvent this clear mandate, either through outright denials or through more insidious but equally pervasive refusals to grant public interest fee waivers, on the grounds that information does not clearly relate to "what the Government is up to."

Thank you for giving the Reporters Committee the opportunity to testify here today.

Mr. WISE. I thank the entire panel. I'll begin questioning.

Mr. Murphy, when I was reading your statement last night, I notice you referred to the Department of Housing and Urban Development as an agency that there had been some problems getting information from in a particular locality. It struck me that in having a conversation just yesterday with someone from West Virginia, a similar complaint was made. I just wonder whether HUD has been a source of problems for those filing FOIA requests?

Mr. MURPHY. Sir, we've had problems virtually along the line with many agencies. Most specifically, those problems are the kinds of things that our attorneys have been handling. We have a lot of problems at the State level. I could just say in a general way that whenever we encounter an FOIA problem it has the same nature, resistance to giving information.

Mr. WISE. I also notice that in each one of your statements, each one of you refers to legal services. Congratulations, Ms. Kirtley, you had a pro bono lawyer. They went on the Sierra Club's endangered species list a couple of years ago.

But each of you has had recourse to legal talent. I suspect that's not the case for all FOIA filers and particularly even small newspapers, I would think, would be stymied. Would anyone care to comment on that?

Mr. MURPHY. Yes, sir. I'd like to say, and I allude to the statement made by the gentleman to my right here, that access litigation costs are becoming a major concern of ours. We spend, in our organization, well over $100,000 a year in one form or another for access to protect our rights to get information.

In the State of Arizona, we have organized a first amendment coalition hotline subsidized by large newspapers such as ours in behalf of the small media. We do have a lawyer who acts pro bono some of the time. Other times he does not. The small media who encounter this access problem at the State level, with the local law enforcement agency or whatnot, can call a hotline number and get legal assistance. It's worked very effectively. But if you consider that that was not available and they had to hire counsel, most of these small media would not undertake the aggressive type journalism that they have undertaken.

Mr. WISE. Anyone else care to comment?

Mr. MCMASTERS. Mr. Chairman, I would like to add that in many cases the fee that used to be charged was a deterrent to some people, such as freelancers who were doing legitimate work but who were doing it on speculation. The fee itself was a deterrent. You can imagine what a deterrent the prospect of legal costs would be. It's almost assured these days, or has been, that there will be some legal cost involved in filing a routine FOIA request.

Mr. WISE. Mr. Greenfield.

Mr. GREENFIELD. On the question of smaller newspapers and their use of the act, I think it would be important for the subcommittee to realize that smaller newspapers tended to have more FOIA intercourse with State and local agencies. Oftentimes, the interpretations and the actual acts are modeled after the Federal legislation. You'll rarely find a State agency, for example, with a more enlightened policy than a Federal agency. Oftentimes they tend to use the same exemptions that they see the Federal agencies using under the act. So, that trickles down to your local newspapers and their operations, your interpretation of the Federal act.

Mr. **Wise**. Ms. Kirtley.

Ms. **Kirtley**. I just wanted to add that of course our FOIA service center helps reporters from throughout the country. We deal with both State and Federal FOIA requests and it's all free of charge. But we can't litigate the issues for them. We try to lead them through as much as possible through the appeal process, at least in the administrative level. After that though, they are on their own. Frankly, that's where it usually breaks down because it's very difficult for them to get counsel and the promise of fee awards later at the end is usually not enough incentive for most attorneys to take the case on a fee basis.

It's a major, major problem and, of course, it's very expensive for the taxpayers if, in fact, as in Mr. Murphy's case, the media do prevail.

Mr **Wise**. I have a series of questions, but I'm going to see if Mr. McCandless or Mr. Schiff have any questions.

Mr. McCandless.

Mr. **McCandless**. Very quickly, Mr. Chairman. Unfortunately, I'm going to have to go to another meeting.

From the Freedom of Information Act and the position that you people in the media play, it's a fine line sometimes between the need to know, the right to know and what one might call journalistic inquiries for purposes of creating media press.

In the case that you mentioned where the Supreme Court decided against you and you took quite an offense to it. You felt you were right and the Supreme Court was wrong, which is understandable.

The first amendment has certainly been a major issue, litigation, legislation, clarification. Do you feel that the Supreme Court has done with the first amendment in its decision what should be done from the press' point of view, or do you feel that they have further compromised your ability and right to know?

Ms. **Kirtley**. In our particular case or in cases in general?

Mr. **McCandless**. In general.

Ms. **Kirtley**. Well, it's hard for me to speak in general because, frankly, I think the Supreme Court has gone all over the map on press issues. Obviously we have many issues. I think on the issue of libel and invasion of privacy, the Court has taken a very pro first amendment stand in recent months in decisions, and I certainly commend them for that.

But I think that it's important not to characterize the decision in the *Reporters Committee* case as one that purely has an effect on the news media. You don't have to be a member of the news media to file an FOI request. Any member of the public—you don't even have to be a citizen—can do so. Our decision is going to have a tremendous impact on the right of the public and the press to gather and get access to information that I think is clearly very important information and that, may I add again, is generally publicly available at its source.

This caused me great concern and I think if I had to characterize it in a general way, I would say that it evidences to me a concern that the Supreme Court has for the right of the person, the individual person, to maintain his or her right of privacy. It's commendable concern, but when we're talking about public record information, I respectfully submit that it's misplaced and I think the public suffers as a result.

Mr. McMasters. Mr. McCandless, I would agree with Ms. Kirtley generally that the Supreme Court and other courts have gone all over the map on media issues. I would also agree that this is not a media issue, it is a public access issue.

I tend to be a purist. I believe we underestimate the intelligence and the competence of the American people to deal with all sorts of information when we begin depriving them of information on the grounds that they are incompetent or unfit to deal with information. I perhaps go a little further than some of my colleagues. I just believe flatout that the first amendment is the greatest paragraph, the greatest 45 words ever written to give man freedom. I think the more access to information we have and the freer the flow of information, the more intelligent and stronger this country will be.

Mr. McCandless. Let me follow up with another question along this same line.

Those of you who wish to comment, do you feel that the Supreme Court is dealing with the issue of the Constitution and its interpretation thereof or do you feel that it's dealing with the statute in question here, the Freedom of Information Act and its interpretation of that?

Mr. McMasters. Mr. McCandless, I feel that they dealt, as Jane has pointed out, almost specifically with the statute. I hesitate to say this, not being a lawyer, but I think that the first amendment would require more access than the Supreme Court would require in this particular case. I think it has some implications that are worrisome, not just to the press, but to the public. The public is what we're really concerned about here as far as getting information that they pay taxes for the Government to collect. As Jane says, if this is public source, why can't it be public at this level? So, I think they dealt primarily with the statute rather than the first amendment.

Mr. McCandless. There is a rather considerable cost to the taxpayers to make this available in a timely fashion which has been part of the discussion that you have shared with us this morning. The 10 days, in many cases, is virtually an impossibility with the number of people involved and providing this kind of information as it relates to the total budget of that particular agency or organization.

From your point of view, would there be an acceptance to a more lengthy time if it could be demonstrated that within that additional time that there would be more response?

Ms. Kirtley. I think it's very important to note, Mr. McCandless, that in fact the 10-day limit is honored much more in the breach than in the execution even now.

Mr. McCandless. I'm sorry, I didn't catch that.

Ms. Kirtley. All I'm saying is the 10-day time limit is on the whole fallacious at this point. Very few agencies abide by that for the reasons that you enumerated, separate and apart from whatever particular ideological problems there may be. As a practical matter, it's just very hard for them to handle the volume of requests.

I think it is rather absurd for us to be sitting here and saying we would concede, even assuming that we had the capacity to do so, that we would say 20 days would be acceptable or 30 days would be acceptable when in fact agencies are operating on timetables much more lengthy than that now and are not being sanctioned by the courts for doing so. They are not. The courts generally say as long as they are proceeding with due diligence, then it's all right, even if it takes 1 year or 2 years, as in the case of some FBI requests. So, I think that that is a nonissue as such. I don't see the 10-day limit as being the key to the cost benefit, if you will, of applying the FOI Act.

Mr. McMasters. Also, I think some requests are of such a routine nature that indeed the 10-day limit is not unreasonable at all. I think one of the ironies resulting from the 1986 amendment is that the fee waiver thing is now sort of being used as a test rather than something to help implement and speed this process. Some agencies are using it as a test just to deny it routinely so that requesters have to go through that appeal process before they ever get to the heart of what it was they were looking for in the first place.

So, I don't think it's unreasonable, the 10-day limit right now. As Jane says, I think that that's not even in the realm of possibility right now because nobody seems to be working on that timetable.

Mr. McCandless. Thank you, panel. I appreciate your coming. I'm sorry that I'm going to have to leave. We haven't been doing anything for 3 months and then all of a sudden everybody decided to do it on the same day.

Thank you, Mr. Chairman.

Mr. Wise. Mr. Schiff.

Mr. Schiff. Mr. Chairman, thank you for the courtesy of interrupting your questioning to allow me a couple of questions. I do have just a couple of brief matters.

Speaking of NASA, Mr. Chairman, I think I'm the only member of your subcommittee who is also on the Space Subcommittee of Science, Space and Technology. That, of course, is the oversight of the NASA Program.

Their general counsel did testify that they were looking for an exception to the FOIA because they felt that the Freedom of Information Act created a loophole in other laws that guarded American technology. I've offered to meet with them and to look at what proposed language they have, since I'm also a member of your subcommittee.

I just wanted to make an offer since Mr. Murphy brought up the subject. If he'd be willing, I would be glad to—it may be a little unorthodox. I may have to plead naivete as a freshman, but I would be willing, Mr. Murphy, to send you a copy of what NASA proposes to me to introduce in this subcommittee on the Freedom of Information Act and let you look at it and get your reaction, if you'd be willing to accept that.

Mr. Murphy. Be happy to, sir.

Mr. Schiff. Thank you. And that's before I would introduce anything.

The other matter I'd like to bring up is I understand the general tenor that that information which is kept in computers, an electronic file cabinet, I think you called it, Ms. Kirtley, is something that in general should be made available. Certainly it's within the spirit of the law.

But, Ms. Kirtley, I'm a little concerned about the great cause of getting FBI rap sheets, as apparently the symbolism of this fight. You're aware, I'm sure, that FBI rap sheets contain arrest information even when there is an acquittal or even when there is no disposition shown at all. I presume you're aware of that.

Ms. KIRTLEY. Yes.

Mr. SCHIFF. Do you think there is a proper news media use of arrest without conviction information?

Ms. KIRTLEY. Yes, I do.

Mr. SCHIFF. What would that be?

Ms. KIRTLEY. An arrest is a public event, Mr. Schiff. Thank goodness that that is true, because I think that the safety and security of the people of this Nation rests on the fact that our criminal justice system and law enforcement system is open, is public and is subject to public scrutiny.

As I alluded to in my formal statement, I think that it is an earmark of totalitarian societies that police are able to operate in secret. That doesn't happen in this country because our police blotters, for example, are open to inspection and it's possible for journalists, and has been possible for journalists in the past through the use of data retrieval systems in centralized repositories and so forth, to find patterns of abuse among the police.

Remember, an arrest that doesn't result in a conviction can sometimes mean that the person is innocent. It can also mean that that person was a target of police harassment. It's sometimes very hard to determine that if you're looking at isolated instances.

We believe that access to this kind of information would be very helpful in revealing these kinds of patterns and contributing to public oversight. But even if you couldn't justify it on that ground, I would justify it on the simple ground, again, that an arrest is a public event. If the government, any government, State or Federal governments, can declare that a public event ceases to be public at some particular point in time, then I think there is no limit to where that line can be drawn.

I don't see it as a safekeeping measure for the American public, I see it as a very arbitrary and dangerous one.

Mr. SCHIFF. Well, you state your defense of the position for the protection of the individual, but if you had the individual's permission, you could then probably get that information, could you not?

Ms. KIRTLEY. You probably could. Yes, that's true.

Mr. SCHIFF. So really you're talking about getting this information where the individuals whose name is the subject of these arrests may not want you to have that information. Isn't that right?

Ms. KIRTLEY. Yes, that's right. But again I reiterate that I suppose a lot of us, as a matter of the way our society functions these days, have information that we would prefer was not made public knowledge. As Justice Scalia suggested during the oral argument, there is probably a great expectation of nondiscovery in an obscure arrest record that's back 3 or 4 or 5 or 50 years in somebody's record. But that doesn't mean it never happened.

As to your unasked question, which concerns a person about whom that kind of information was disseminated falsely or inaccurately by the news media, that individual has recourse through civil suits. Certainly they have and I'm sure will continue to avail themselves of that.

There are ways to deal with that problem short of denying access to it.

Mr. **Schiff**. Well, first of all, please don't be so sensitive. I didn't ask you a thing about false and misleading news stories. I've never seen one myself in my career in public service.

I just wanted to emphasize that your first statement was based on that we have to protect these individuals and their liberties. It's quite obvious that that is not what principally I think you have in mind. I think you have in mind looking at their records for some purposes that they would not regard as friendly.

Now, insofar as those purposes go, New Mexico, and I think most States, have a State Arrest Records Confidentiality Act. It is true the police blotter is a public record, but in New Mexico, if you were to ask for a record of everyone's arrests that did not result in convictions, under State law you would not be entitled to that information. Isn't that true in most States?

Ms. **Kirtley**. That has become true in many States since our case began 10 years ago, Mr. Schiff. Had our case been able to go through the system a little bit faster, I think we would have presented the Supreme Court with a very different fact situation.

But you are correct that the centralized criminal history repositories in many States have limited access. It's not completely closed, but oftentimes you have to jump through a number of hoops to get access to it.

I disagree with that determination as well, let me add.

Mr. **Schiff**. I understand. Well, isn't it true that this information is limited because even if the reports of the arrests are accurate, even if there's no inaccuracies reported, they are just arrests. Wouldn't they in the media just serve to embarrass somebody?

Ms. **Kirtley**. They are just arrests, Mr. Schiff, but they're also public events and they're public facts. There are many things that happen in public and that are public events that are embarrassing. But that doesn't mean that they're not in the public interest.

Brushes with the criminal justice system are something that we have decided in our society, because we don't proceed with secret police forces and star chamber proceedings, are matters of public interest and concern, both for the safety of the public and to preserve the safety and security of the individual from unjust searches and arrests, and so forth. It is a symbiotic relationship, if I may suggest, and I think that, in fact, the ultimate safety of the individual as an individual in society is better served by openness than by closure.

Remember that when records are closed, one of the realities of that, and it has been true with the FBI is that closure doesn't mean that the FBI or any other agency cannot selectively release that information. I don't really like the idea of the Government sitting in judgment of what is best for me to know out of the huge body of information that it maintains. I'd rather be in a position to be able to take a look at that myself.

Let me also just add quickly, that insofar as there is the potential for "misuse" of arrest records by individuals other than the new media, let's say by an employer who might choose to discriminate against someone who's applied for a job on the basis of an arrest record, I think that there are, again, other ways to deal with that problem. We already deal with discrimination in employment through statutes. I think that that could be well left to a statutory scheme without denying access to the core information, which again is public at its source.

Mr. SCHIFF. You keep coming back to this star chamber idea. But if I'm an individual and I think that I have been unjustly arrested by the police and I want the press, in its role of informing the public to know about this abuse, I'm free to come to you, aren't I?

Ms. KIRTLEY. Certainly you are.

Mr. SCHIFF. And I'm free to tell you all about that arrest, aren't I?

Ms. KIRTLEY. Yes.

Mr. SCHIFF. All right. Well, speaking of, and you mentioned it, discrimination in the work force, I've noticed in about every employment application I've seen, they now ask—they customarily ask have you ever been convicted. They no longer ask, by and large, have you ever been arrested. Isn't that correct?

Ms. KIRTLEY. I wouldn't know. I don't fill out forms like that.

Mr. SCHIFF. You haven't done that?

Ms. KIRTLEY. But again, I don't know quite what the point of—what that has to do with the matter.

Mr. SCHIFF. I'll tell you. I think the point is, haven't there been decisions of the Federal courts that hold that, for example, it's an established fact that members of minority groups are arrested in greater proportion than nonminority groups and therefore asking if someone was arrested in an employment application constitutes employment discrimination. Haven't there been such cases?

Ms. KIRTLEY. If there have been, Mr. Schiff, then I humbly suggest that the courts have dealt with the problem in exactly the way I suggested, through either a court decision or statutory scheme to prevent nondiscrimination, which is supposedly really the issue, rather than closing access to publicly available information. There are ways to deal with that short of denying access to the information. What you're outlining is one of the ways.

Mr. SCHIFF. Well, but in terms of the State laws, such as New Mexico's that was passed, that would not allow a request from law enforcement agencies to tell us every time a certain person has been arrested, have there been any State decisions that have held those laws unconstitutional?

Ms. KIRTLEY. They have not been held unconstitutional.

Mr. SCHIFF. You say they have not been held unconstitutional?

Ms. KIRTLEY. No.

Mr. SCHIFF. Have they been held constitutional? I mean——

Ms. KIRTLEY. Well, the point is that it hasn't been perceived, and the Reporters Committee has not argued this as a constitutional issue, turning on the first amendment. We're talking about a statutory issue and the right of the public to be informed, which I think is an ultimate underpinning of our society. Certainly constitutionally based, but not necessarily based on the first amendment or the fourth amendment or any particular amendment to the Constitution.

I think that many States, in a misplaced zeal to protect the individual, are actually, through the offices of either people that are overly concerned about personal privacy or through the very strong lobbying efforts of the law enforcement community, which I think may have its own reasons for wanting to keep this information sealed, have bought into a scheme that I think ultimately is to the detriment of the individual and to society as a whole.

Mr. Schiff. Mr. Chairman, in conclusion, I'd just like to observe, I agree with 99.9 percent of what the witnesses said here and the prepared statements I've read. I just don't think I'm a believer in totalitarian government because I also think there's a right to privacy at certain times too.

Thank you, Mr. Chairman.

Mr. Wise. Thank you, Mr. Schiff.

I note that the *Reporters Committee* case brought together those two well-known parties so often together, the ACLU and the Department of Justice. Both were on the same side on that one. I'm not sure what that says about either one.

But stay tuned because we're going to hear from the other side later on when we do have a representative from the ACLU.

I have several questions. The press was generally perceived as being a fairly large winner from the 1986 amendments. Fees for reporters were reduced significantly, small requests, that is under 100 pages and 2 hours of search time, were free to all requesters. My first question is whether you like what the provisions were intended to do and would you comment on how the provisions have been implemented by the executive branch? I'll just start with anyone who wants to.

Mr. McMasters.

Mr. McMasters. Thank you, Mr. Chairman.

I think that I would amend your question from where I stand, that the public should really have benefited from this 1986 amendment because, as we all know, information often is perishable. Those who need it most sometimes don't have all the resources to get it, that other special interest groups, industries, that sort of thing have.

However, as I mentioned awhile ago, I do think that compliance has not been as forthcoming as we had hoped during the past 8 years. It is difficult, if not impossible sometimes, to get the fee waiver granted the first time through. As I said awhile ago, sometimes it seems like a test for delaying responding to the original request. So, I think that we should have been winners, the press and the public and good government, but I don't know that we have been.

I think that there needs to be more teeth. If no one is willing to put more teeth into the amendment and the statute together, then this subcommittee especially has to continue to exercise the excellent oversight it has in the past to help move these things along. But it still hasn't gone as far as it needs to go.

Mr. Wise. Would there be general agreement on that?

Ms. Kirtley. Yes. And may I just add, Mr. Chairman, that I think that a very serious problem was created after the amendments passed, when the Justice Department issued its guidance to the agencies on the type of regulations that they should enact in terms of actually implementing the fee waiver provision.

Some of the things that have happened have been that, the holders of the information, the Government agencies, are putting themselves in the position of determining whether something is, in the public interest, whether it is news, whether it is newsworthy and making their determinations on whether a fee waiver will be granted on that basis.

Frankly, I think that this is a situation where, as recognized even during the oral argument in our case, Justice Scalia and Chief Justice Renquist expressed some concern that the custodian who might well have many reasons for not wanting to give out the information could use this as an excuse to, as a practical matter, deny access to a small requester or a small news organization that otherwise wouldn't be able to pay for the information.

Mr. Wise. Last Congress, the subcommittee held a hearing on alternative dispute resolution mechanisms for FOIA requests. There really wasn't any strong consensus that emerged from that hearing. Do you think that we need an ombudsman or some other kind of stronger administrative appeal mechanism?

Ms. Kirtley. Well, we testified at those hearings and I won't recapitulate that. I think one of the things that was discussed at the hearings and presented as a model was the handful of States that have alternative dispute resolution groups now and they're working very well.

So, I think that as a concept, it's a useful one and an interesting one. We would just have to be very careful, I think, to insure that it's not made an arm of an agency or an executive department that might not really allow it to operate as an independent entity that would act in the best interest of the citizenry in implementing that Freedom of Information Act.

Mr. Wise. Mr. Greenfield.

Mr. Greenfield. As a practical matter, I think, on a day to day basis in some of the smaller newspapers in this country, the decision is not whether you can afford to file a Freedom of Information Act request or whether you have staff time to do so, but what you do after that request is denied, how much you can afford to pay your counsel to follow up, how much resources you're going to dedicate to pursuing a freedom of information request that is not met. If there is an alternate way to more expeditiously resolve some of those exemptions that are relied on, I think that would be helpful to many of the smaller newspapers.

Mr. Wise. Anyone else? Mr. Murphy.

Mr. Murphy. As a theoretical matter, I suppose some kind of mechanism like that would be useful. But I have to get back to my own personal view on this, that the more obstacles and procedures that are placed in the path of accessed information, it reduces the likelihood that the information is going to be released on a timely basis. In some cases, this could be absolutely critical. Something released today could influence an election, could influence some financing decisions, et cetera. Something that's released 30 days later is totally useless.

As a practical matter here, as again I'll say, some of us in the profession would disagree with that, some are in favor of it. I would certainly not oppose it, but I certainly would try to discourage any further process or mechanism that would delay the timely release of information.

Mr. **Wise**. Mr. McMasters.

Mr. **McMasters**. Mr. Chairman, we'd welcome any effort to help expedite and to give some guidance to agencies in responding to FOI requests. But this does run the real risk of just becoming one huge bottleneck for all because the history so far, at least in the last 8 years, has been that nearly every agency does what it can to delay requests. This gives it just one more area to the request and let it sit in the file box——

Mr. **Wise**. I would suppose so, but my experience is that you're not getting speedy resolution in the courts. Every time you walk it down to the Federal courthouse, I think you're parked for a number of months, if not years.

How long did it take for you to get to the Supreme Court? Ten years?

Ms. **Kirtley**. Ten years altogether.

Mr. **Wise**. Well, maybe on a case like that, if they want to appeal it, they're going to anyhow. But I just wonder whether in some cases you could cut out some of the deadwood. You get an administrative ruling in your favor and the agency just rolls over as opposed to going to court.

Since records of arrests and convictions are public when created, is it possible for the press to solve the problem by collecting and compiling the information on its own?

Ms. **Kirtley**. Well, of course, as a theoretical matter, I suppose it's possible for the local paper to start its own centralized criminal history repository. But it's important to bear in mind, especially living in the global village that we do now, the fact that somebody has a record in your home State may be of great interest to somebody halfway across the Nation.

The criminal history record of the individual, if he has one, who was piloting the oil freighter, for example, I think would be a matter of great public interest to a lot of different people. Presumably, under the scheme you were proposing, his local paper might have maintained a rap sheet like that, but it's unlikely that anybody would have.

Mr. **Wise**. Ms. Kirtley, as one from West Virginia, I have to inform you that, from the State that has the lowest violent crime rate in the Nation, we have almost no rap sheets.

Isn't that right, Mr. Greenfield?

Mr. **Greenfield**. Except the one on you.

Mr. **Wise**. And you've been exploring it relentlessly.

I think that this has generated some good discussion. We will leave the record open. Some of you may have some additional remarks you'd like to file in light of the questions Mr. Schiff has asked, Mr. McCandless, and myself. There is a vote on in the House. It's a very important informational vote; namely, the approval of yesterday's Journal. Should it fail, nobody's quite sure what happens around here, but we are required to answer it. Otherwise you will discover that my voting percentage is not 100 percent.

We will recess for 15 minutes. Thank you.

[Recess taken.]

Mr. **Wise**. The hearing will reconvene.

We now have a panel of several representatives of the Federal Government. John Penhollow, the Director of the Office of EDGAR Management—and I'll let you explain that acronym—Mr. Penhollow, with the Securities and Exchange Commission; Mr. Edward J. Hanley, Director of the Office of Information Resources Management of the Environmental Protection Agency; and Mr. John J. Franke, Jr., Assistant Secretary for Administration, Department of Agriculture.

Gentlemen, we're glad to have you here. I hope I can promise you that your testimony will be uninterrupted by votes. I believe that's the case for at least the next hour or so.

Your entire statements will be made part of the record. So, please feel free to summarize in any way you wish.

If you'd please stand and let me swear you in.

[Witnesses sworn.]

Mr. **Wise**. Mr. Penhollow, do you have someone accompanying you?

Mr. **Penhollow**. Yes. Dan Goelzer, who is the general counsel for the Commission is with me at the table this morning.

Mr. **Wise**. Good to have you, sir. Mr. Penhollow, if you'd care to start, then we'll just work our way down the row.

STATEMENT OF JOHN PENHOLLOW, DIRECTOR, OFFICE OF EDGAR MANAGEMENT, SECURITIES AND EXCHANGE COMMISSION, ACCOMPANIED BY DAN GOELZER, GENERAL COUNSEL

Mr. **Penhollow**. Thank you, Chairman Wise, and members of the subcommittee.

My name is John Penhollow and I'm the Director of the Office of EDGAR Management at the SEC. The Commission and I are pleased to have this opportunity to testify before the House Subcommittee on Government Information, Justice, and Agriculture on the status and plans for the Commission's EDGAR system.

For your information, EDGAR is an acronym which stands for electronic data gathering, analysis and retrieval. EDGAR will be used to computerize the receipt, processing and dissemination of over 10 million pages of paper that the Commission receives annually.

To prove this concept, back in 1984, the Commission set up an EDGAR pilot. We've had this in operation now for 4½ years. It's working quite successfully. We have over 55,000 electronic filings now in the data base through April 1. We have over 500 full participants filing via the pilot and over 900 partial participants that are also active.

The filers are able to file their information through computer diskettes or on magnetic tape or by direct transmission using various communications protocols.

In January, in fact on January 3 of this year, the Commission awarded the contract for operational EDGAR, the big system, to the BDM International Corp. and with Mead Data Central, Sorg, Inc., and Bechtel Information Services as subcontractors.

BDM, which is a subsidiary of Ford Aerospace, will actually design and develop the system and Mead Data Central will maintain the EDGAR data base and provide the LEXIS—like full text search and retrieval capability for the SEC staff and users of the public reference room and press room.

Sorg, Inc. will advise on the design and operation of the receipt subsystems, since they've been very active in the development of the pilot and the use of the pilot.

Bechtel Information Services will provide the paper and microfiche dissemination of both electronic and paper filings. They have been the Commission's microfiche and paper contractor since 1985.

In the back of the material that I submitted to you, there was a figure which shows the three major subsystems. In the interest of time, I'm going to run through it quickly, giving you a bit of an idea of what each of these subsystems does then focus more sharply on the dissemination subsystem.

Actually, the EDGAR system as a whole consists of three major subsystems. There is a receipt subsystem which receives the filings, and there is an acceptance and review subsystem in the middle portion which aids the review and analysis of those filings by the agency staff, the archiving of them, and then the dissemination subsystem to the public and to subscribers.

The receipt subsystem has the same series of receipt modes—that is, computer diskettes, magnetic tape and direct communications—as the pilot has. We will use an electronic bulletin board to advise filers regarding the status of their filings in a very prompt manner. BDM is developing some special PC based software to assist the filers in making their filings and this software will be provided at no cost to the filers. There will be a hotline for support, plus a filer manual. As a matter of fact, we'll also provide a computer diskette with the instructions to the filers as part of the support package.

The Commission does not plan to train the filers, but will provide training materials through the contractor to private sector companies who will provide that training. The filers will also be given an opportunity to test their filings for 2 or 3 months prior to mandatory filing.

The acceptance and review subsystem, otherwise known as the A&R subsystem, is the central portion of the system. As I said earlier, that's the part that the agency staff will interact most directly with. It will ensure that the filings are logged and indexed and made available to the proper SEC branch.

The 550 work stations will be installed by the end of 1990. They will consist of four types. All of them will be capable of doing filing retrievals, text query, print capability, and access to certain SEC data bases under control by the agency. All except the public reference room terminals will generally be used for filing comment and review. The management work stations will be used to assign and prioritize the work loads, filings and form types, and also to set certain review parameters.

The dissemination subsystem, which is the one that is of primary interest here today, will be developed and operated by Mead Data Central. It will do everything in the dissemination area except for the paper and microfiche services which Bechtel Information Services will provide.

There are two levels of subscription services that will be available through the dissemination subsystem. A level I actually consists of two varieties. With regular level I service, a subscriber will receive a direct connection to the dissemination 3-day data base. That data base will include all filings made over the past 3 days, including the current day, plus an overnight tape of all filings accepted the previous day. A so-called broadcast level I subscription is also provided. It will allow a subscriber to receive a realtime transmission of all filings as they are accepted by the SEC. In the order of their acceptance.

There is also a level II subscription, which is the lower cost subscription. In this case, the subscriber will receive one or more of eight subsets of the daily filings on an overnight magnetic tape, but the subscriber will not have any real-time connection to the dissemination subsystem.

All subscription services will be available on equal terms to all persons. Mead will finance the development and operation of the subsystem and recover its cost through the sale of data and services pursuant to a uniform schedule of fees regulated by the SEC. We will also monitor that very closely and audit that process on an annual basis or more frequently if necessary.

Data so obtained may be used, resold, or redisseminated without restriction or payment of additional fees or royalties.

Now, in addition to this form of dissemination, the agency will support a number of viewing terminals with print capability in the public reference room and the pressroom in Washington and also in the regional and branch offices of the agency. There are nine regional offices and four branch offices scattered across the United States.

Just a word about the contract. The contract has an expected term of 8 years. The first 3 years of it is on a cost reimbursement plus fixed fee basis and the final 5 years is on a firm fixed price basis. The receipt and the A&R subsystems will be fully financed by the Government, whereas the dissemination subsystem, as I have already noted, will be fully financed by Mead Data Central.

We are currently very much involved with the design of the EDGAR system. However, I want to make a few comments about the overall implementation schedule, which is subject to design review and Commission rulemaking.

We have awarded the contract in January, and we plan to design the system by the latter part of this summer. We also hope to publish rules and phase-in schedules for comment later this summer. By early 1990 we would hope that the temporary rules and phase-in schedule are adopted. By mid-1990, we plan to phase the pilot filers that are currently on the pilot system. We will convert them to the operational system and then phaseout the pilot itself. By late in 1990, we hope to bring the first mandated group of filers onto the system. This is the group that the Authorization Act refers to as a "significant test group." It is the group that Congress has mandated must file successfully for at least 6 months before mandatory filing rules can be adopted.

We expect to start the mandatory filing process in late 1990 and have the final EDGAR rules adopted by the Commission and begin the full-scale phase-in by mid-1991. We plan to bring the companies on through mid-1993 when we hope to have essentially all companies on EDGAR.

I think the first significant test group will probably consist of somewhere between 1,500 and 2,000 mandated filers, but the exact number is still subject to rulemaking. At the conclusion of the test period, we will begin the mandatory phase-in of all companies. We expect the phase-in will be done on a quarterly basis in groups of 1,500 to 3,000 companies until essentially everyone is on the system.

We believe that this is a very exciting project. It will have a lot of impact on the financial community. In general, we believe that it will provide investors and security analysts and the public with high-speed access to corporate disclosure documents. I emphasize the word "public" because I think through the public reference room terminals they will be able to get access to information in ways that certainly up to now has not been possible.

Companies will be able to make required filings on a timely basis using diskette, tape, or direct transmission, and Commission staff will certainly be able to retrieve, review, and analyze disclosure documents more efficiently at their computer work stations.

In addition to having what we estimate to be quantitative benefits in excess of $100 million over the 8-year term of the contract, we expect EDGAR to improve the efficiency and fairness of the securities markets. We also think it may serve as a model for similar systems that are being contemplated by other countries.

We also have plans to continue to work with the North American Securities Administrator's Association, or NASAA as we refer to it, and the self-regulatory organizations to achieve one-stop filing over time. This would be a system whereby those who have to have multijurisdictional filing requirements could satisfy those requirements by filing once on EDGAR. There are still many obstacles in this area, but we are continuing to work with the appropriate groups to achieve one-stop filing over the next several years.

That is all I want to say about the system, and I appreciate the opportunity to review it for you this afternoon. I will try to answer any questions you may have.

Mr. Wise. Thank you very much. I will say that—I hope you'll understand that last night I was resting on the couch reading about EDGAR and EDGAR put me to sleep. You have made it much more visible and real and I understand it much better. I hope EDGAR doesn't have that result on the filers.

[The prepared statement of Mr. Penhollow follows:]

Prepared Remarks on EDGAR Status and Plans for the Hearing on Federal Information Policies and Practices by the House Subcommittee on Government Information, Justice, and Agriculture

Rayburn House Office Building - Room 2247
April 18, 1989 - 10:00 A.M.

Chairman Wise and Members of the Subcommittee:

My name is John Penhollow and I am Director of the Office of EDGAR Management at the Securities and Exchange Commission. Accompanying me at the table this morning is Dan Goelzer, General Counsel for the Commission. I am pleased to have this opportunity to testify before the House Subcommittee on Government Information, Justice and Agriculture on the status and plans for the Commision's EDGAR system. EDGAR is an acronym for the electronic data gathering, analysis and retrieval of filings with the Commission.

Background

The purpose of EDGAR is to computerize the receipt, processing and dissemination of the more than ten million pieces of paper received by the Commission annually from corporations that offer securities to the public.

The concept of an electronic disclosure system has been tested over the past four and a half years under a pilot project, operated until April 1, 1989 by Arthur Andersen & Co. The pilot project has successfully demonstrated the feasibility of electronic filing. From September 24, 1984 to April 1, 1989, the Commission received over 55,000 electronic filings. On average, the Pilot receives approximately 1500 filings per month. There are over 500 fully participating volunteer companies and over 900 additional registrants who file some of their filings electronically.

Filings on the EDGAR Pilot may be made in three different ways. First, filings may be submitted on word processor or personal computer diskettes in a variety of formats. Second, filings may be submitted on magnetic tape in a specific format. Third, electronic filings may be transmitted to the Commission directly over telephone lines via specific communication protocols. These same modes of input also will be available on Operational EDGAR.

Award of the Operational Contract

On January 3, 1989, the BDM Corporation, with Mead Data Central, Inc., Sorg Incorporated, and Bechtel Information Services as subcontractors, was selected by the SEC to be the contractor for the Operational EDGAR system.

BDM, a subsidiary of Ford Aerospace Inc., is a professional and technical services firm that has provided advanced technology applications for clients in the private and public sectors worldwide since 1959. BDM will design and develop the Operational system.

Mead Data Central, a subsidiary of Mead Corporation, has been active in the electronic publishing industry since it was founded in 1968. It became widely known following its introduction in 1973 of LEXIS, a group of electronic libraries containing legal documents, including cases, administrative decisions, attorney general opinions, and regulatory materials. Mead Data Central will maintain the EDGAR data base and will provide a LEXIS-like full-text search and retrieval capability for the SEC staff and users of the Public Reference and Press Room terminals.

Sorg Incorporated is one of the leading financial and corporate printers in the United States. Based on their active participation in EDGAR, Sorg will provide advice on the design and operation of the Receipt subsystem.

Bechtel is a leading engineering and construction firm, that maintains one of the largest micrographics/reprographics operations in the country. In 1985, Bechtel Information Services became the Commission's paper and microfiche contractor. Under the EDGAR contract, Bechtel will continue to provide paper and microfiche dissemination of both electronic and paper filings.

Receipt and A&R Subsystems

As shown by Figure 1, at page 10, EDGAR is composed of three major subsystems for Receipt, Acceptance and Review (A&R), and Dissemination of electronic filings.

The Receipt subsystem receives, validates and accepts filings. It will be based on a Stratus Model 130 fault-tolerant computer. In addition, the Receipt subsystem will have eight Stratus Model 70 computers to manage the receipt of electronic filings submitted directly via telephone lines. Filings also will be received on diskette and magnetic tape and input to the Receipt subsystem directly. The system will be able to advise filers promptly and automatically regarding the status of their filings through an electronic bulletin board.

BDM will develop special software to be used by filers on their personal computers to assist them in preparing and transmitting their filings. This software will be made available to filers at no cost. The Receipt subsystem also will be able to receive filings transmitted by filers who choose not to use the special software.

BDM and the SEC will provide a hot line for filer support as well as a filer manual with complete instructions for filing. Neither BDM nor the SEC plans to offer formal filer training, but BDM will develop training materials under the terms of the contract and the SEC will encourage private sector companies to use these materials and offer training to new filers. Filers also will be given the opportunity to do test filings prior to the time that they are phased onto the system.

Once filings are accepted by the Receipt subsystem they will be passed directly to the Acceptance and Review (A&R) subsystem. The A&R system will keep track of the filings, insure that they are logged, indexed, and made available to the proper SEC branch for review.

It is currently anticipated that there will be 550 EDGAR workstations installed in the Commission headquarters and in regional offices by the end of FY 1990. These workstations will be of four types -- management, processing, support and public reference (read-only) workstations. All workstations will have filing retrieval, text query and print capability plus access to certain SEC databases under password control. In addition, the managerial, processing and support workstations will have access to a variety of functions related to filing review and comment -- including the ability to archive data. Managerial workstations will be able to assign and prioritize workloads, companies and filings, and set various review parameters.

Dissemination Subsystem

Mead Data Central will develop and operate the dissemination subsystem at its own expense except for the paper and microfiche services which will be managed by Bechtel. In accordance with Commission requirements, the dissemination subsystem will provide two levels of subscription services. The purchaser of a Level I subscription will receive a direct connection to the EDGAR system plus an overnight magnetic tape of all filings filed that day. In addition, the Level I subscriber will be offered an optional "broadcast" service, i.e., a real-time feed of all filings as soon as they are accepted by the SEC. A Level II subscriber will receive one or more of eight subsets of the daily filings on an overnight magnetic tape, but will not have a real-time connection to the EDGAR dissemination data base.

These subscriptions will be available on equal terms to all persons. Mead Data Central will finance the dissemination subsystem and recover its costs through the sale of data and services pursuant to a uniform schedule of fees that will be regulated by the SEC. The data so obtained may be used, resold, or redisseminated without restriction and without payment of additional fees or royalties.

In addition to this form of dissemination, operational EDGAR will provide a number of viewing terminals in the Commission's regional and branch offices and in the press room in Washington.

Funding

The Operational contract has an expected term of eight years (a base period plus seven options). The initial three years of the contract will be on a cost reimbursement plus fixed fee basis, with the fee calculated as a percentage of labor and overhead costs only. The last five years of the contract will be on a fixed price basis.

The Receipt and A&R subsystems will be fully financed by the government. The cost of the dissemination subsystem will be borne by Mead Data Central.

Timetable for Implementation

The following development and implementation schedule is tentative pending further design review and Commission rulemaking.

Early 1989	-	Contract awarded.
	-	System development and rule-making schedule established.
	-	System development initiated.
By mid 1989	-	EDGAR rules and phase-in schedule are published for comment.
By early 1990	-	Temporary EDGAR rules and phase-in schedule are adopted.
By mid 1990	-	Pilot filers are phased on to the operational system.
	-	EDGAR pilot is phased out.
By late 1990	-	First mandated group of filers will begin filing. This is the "significant test group" that Congress has mandated must file successfully for at least six months before mandatory filing rules can be adopted.
By mid 1991	-	Final EDGAR rules are adopted by the Commission.
	-	Full scale phase-in begins.
By mid 1993	-	Phase-in completed.

The current plan is for the Pilot filers to be converted to the Operational system first. After allowing the Pilot filers a reasonable period of time to adjust to the Operational system, a significant test group of 1500 to 2000 mandated filers will be phased onto the system for at least six months before any additional filers are mandated to file on EDGAR. At the conclusion of the test period, the mandatory phase-in of all remaining filers will begin assuming that those who are already phased-on are able to file successfully. Companies will be phased-in on a quarterly basis in groups of 1500 to 3000 until essentially all filers are on the system in 1993.

Impact of EDGAR

EDGAR will provide investors, securities analysts and the public with high speed access to corporate disclosure documents via computer screens. EDGAR also will enable companies to make required filings via direct transmission, diskette or magnetic tape. Finally, EDGAR will enable the Commission staff to retrieve and process filings and analyze filed data more efficiently at computer workstations.

In addition to estimated quantitative benefits in excess of $100 million dollars over the term of the contract, the Commission believes EDGAR will improve the efficiency and fairness of the nation's securities markets. It also may serve as a model for the development of similar electronic filing and disclosure systems by other agencies both in the U.S. and abroad.

EDGAR also will help foster the development of one-stop filing in the United States, under which registrants can satisfy various jurisdictional filing requirements for a particular filing by filing it once, on EDGAR. Although many obstacles to one-stop filing remain, EDGAR will provide the state securities regulators and the self-regulatory organizations (SROs) with electronic access to EDGAR data and limited EDGAR functionality. As development of the Operational system proceeds, the Commission will continue to work with the state securities regulators through the North American Securities Administrators Association (NASAA), and with the SROs to achieve one-stop filing within the United States.

EDGAR System Architecture

The BDM Corporation

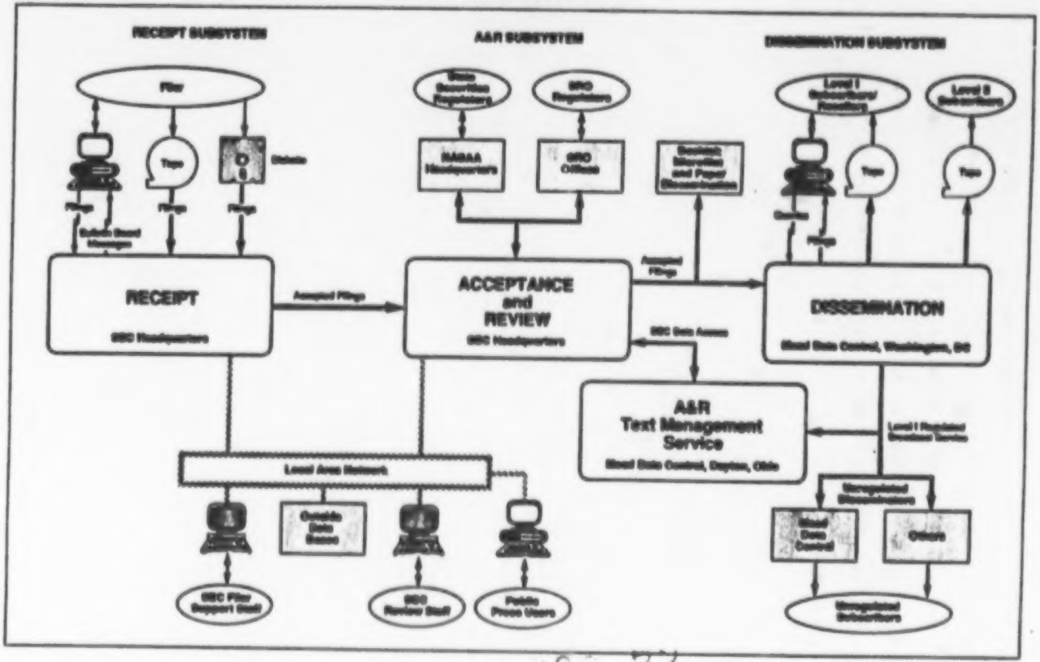
RECEIPT SUBSYSTEM
A&R SUBSYSTEM
DISSEMINATION SUBSYSTEM
Filer
Tape
Diskette
Filings
Bulletin Board Messages
State Securities Regulators
SRO Regulators
NASAA Headquarters
SRO Offices
Microfilm and Paper Dissemination
Level I Subscribers/ Resellers
Level II Subscribers
Queries
RECEIPT
SEC Headquarters
Accepted Filings
ACCEPTANCE and REVIEW
SEC Headquarters
SEC Data Access
DISSEMINATION
Mead Data Central, Washington, DC
A&R Text Management Service
Mead Data Central, Dayton, Ohio
Level I Regulated Broadcast Service
Unregulated Dissemination
Mead Data Central
Others
Unregulated Subscribers
Local Area Network
Outside Data Bases
SEC Filer Support Staff
SEC Review Staff
Public Press Users

FIGURE 1

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Mr. WISE. The next witness will be Edward J. Hanley, with the Environmental Protection Agency.

STATEMENT OF EDWARD J. HANLEY, DIRECTOR, OFFICE OF INFORMATION RESOURCES MANAGEMENT, U.S. ENVIRONMENTAL PROTECTION AGENCY

Mr. HANLEY. Mr. Chairman and members of the committee, as you mentioned, I am Edward J. Hanley, the Director of EPA's Office of Information Resources Management and I appreciate the opportunity to share our experience with you in implementing Title III, the National Toxic Release Inventory.

The toxic release inventory lists 300 chemicals and 20 chemical categories which are subject to annual reporting. This TRI data base is unique because it requires annual reports of emissions, all emissions, into the air, water, and land, on a chemical—specific basis, and requires that EPA make these data available, and I quote the law, "accessible by computer telecommunications and other means to any person on a cost reimbursable basis." We expect to make these data available to the public later this spring.

In implementing this mandate, we've had to confront a number of issues that apparently are of interest to this subcommittee and which we think might be of interest to other Federal agencies, so we welcome this opportunity to share our experience. The real test of how well we have confronted these issues will begin with the release of the public data base very soon.

Our efforts to implement the act have focused on the following objectives:

First, to design a data collection form which accurately incorporated the breadth of information mandated by Congress;

Second, to design an efficient computer based system to house the data and to minimize errors;

And finally, to provide the data to the public, both electronically and by other means, in a manner which promotes easy access and use.

Let me talk a little bit about how we've addressed these goals.

First, our reporting form and final reporting rule were designed to meet the congressional blueprint for the content of the data base and the rule defining the form was published in February 1988 in order to provide the affected filers with sufficient notice in advance of the July 1988 reporting deadline.

We have received approximately 74,000 reporting forms which have involved 18,000 facilities. The data processing began shortly after the reporting deadline and continued through early 1989.

For the first reporting year, that is calendar year 1987, we conducted a pilot project that involved reporting using electronic means. Six companies involving 65 chemical facilities chose to report with electronic media. I won't dwell on the details, but we're very encouraged by the results and we expect electronic reporting to increase substantially in the future.

Now, we've taken a number of steps to insure that the data received from industry are effectively entered, that means accurately and in a timely way, into our data base, including the use of a number of automated edit checks and algorithms to insure that we've spotted errors when they occur. We have gotten a lot smarter as this process has gone along and used a number of edit checks late in the process that in the future we will incorporate at the beginning of the process and, we think, speed it up.

Another issue is that of trade secrets. We published a final rule defining how claims for trade secrecy can be made under the act in July 1988. We have currently only 41 of the 74,000 reporting forms involving claims of trade secrecy. Initially, about 200 claims were made. As you can see, the majority have been withdrawn. We have made no final rulings on trade secrecy at this point. We have, as I mentioned, 41 still under consideration.

I should point out that of the 66 data fields on the reporting form, only 2, the chemical name and the chemical abstract registry service number, which is a unique number assigned to the chemical, may be claimed as a trade secret. All other information is available to the public. So, as you can see, very little of the TRI data, regardless of the outcome of the trade secrecy claims, will be kept from the public under the trade secrecy provisions.

Now, we've taken a number of steps to involve the public in decisions we have made defining public access. In March 1988, we issued a report in which we defined the options we saw for making the TRI data base accessible to the public. A public meeting was held on March 30 to present these options and discuss our recommendations. Based on this, we decided to proceed with an interagency agreement with the National Library of Medicine, and we're also encouraging private vendors to put the data on their systems as well.

We selected NLM based primarily on two salient features: cost to the user—NLM's system costs are estimated at $18 to $25 an hour—and the fact that NLM offers multiple and we think complementary toxicological and other health and safety files. We signed an interagency agreement with NLM in July 1988 and in July 1989 we amended that agreement to include the development of menus for the data base to make it more user friendly. We made these amendments based on comments at public meetings on the proposed NLM public system.

We are planning a second amendment to this interagency agreement which will expend data base training and outreach that we now believe is necessary for the public's maximum use of the data base.

We've made a study in 1987 on potential users of the TRI data base. We identified a broad spectrum of users, including government officials at all levels, consulting firms, local, regional and national organizations, academics, environmental attorneys, real estate agents, and land developers, as well as local citizens.

In general, the needs of the potential users can be characterized into four categories: those needing hard copies of individual forms; those needing national and State level analyses; subsets of the data base in machine readable form for analysis by the user; and finally, special analyses that require access to an online data base.

For example, citizens in local government groups are interested in obtaining copies of submissions for nearby facilities, while national groups appear more interested in standard national analysis and the online access.

Since July 1988, hard copies of the TRI data, individual filings, have been available upon request following Freedom of Information Act procedures. We have a title III reporting center in Washington, DC, that is responding to these requests, which is also our data processing center. To date, over 1,200 requests for TRI data have been filled, coming from a variety of users, including Members of Congress and their staff.

The NLM TRI data base is now being tested before it becomes publicly available. Very shortly, we'll be testing this data base at several sites with two levels of users, novice and experienced. The test sites, we believe, represent the geographic mix and the anticipated user groups I mentioned earlier. Experienced sites have been selected to get a group of users with some degree of training on NLM's TOXNET or comparable online systems. User friendly menus designed for novice users lacking this experience are being developed and will be tested later.

Now, we have the discretion to address the fee waiver question, to waive TRI data base fees when this is in the public interest and consistent with the purposes of the section 313 act. We are looking at pilot programs whereby individuals or groups may apply for fee waivers through local emergency planning committees for projects deemed to be in the public interest.

Now, in addition to providing the TRI data through telecommunications, the act requires us to make this data base available through other means. Pursuant to this, we plan to publish and nationally distribute the TRI data base in a number of alternative formats. Computer output microfiche will be distributed to each congressional district using the Government Printing Office Federal Depository Library Program. GPO will also provide national data sets to over 100 regional depositories and State libraries.

Finally, over 3,300 sets of the TRI State data will be distributed to nondepository county libraries that are being selected on a county-by-county basis by State librarians. Microfiche can be inexpensively and easily duplicated by GPO and by these libraries if additional copies are needed.

National sets of the TRI microfiche will be distributed throughout EPA and to States. I might mention at this point that EPA has a network of libraries comprising about 28 individual facilities, most of which have increasingly over recent years served the public. The TRI data base will be available through these libraries.

We are planning to use, as well, compact disks, read only memory, or CD-ROM, for TRI distribution. The CD-ROM distribution that we're talking about is a pilot project with the Joint Committee on Printing and the GPO. The TRI data on the CD-ROM will be the first of the Joint Committee's projects to be completed and distribution will be to 400 Federal depository libraries.

In addition, we're planning to prepare 300 TRI disks for distribution to a number of the over 200 nondepository research and academic libraries and for internal distribution within EPA.

The third means of information dissemination will include the use of magnetic tape that we will provide to our regional offices as well as State offices with the full data base. This same tape will be available through the National Technical Information Service, or

NTIS and GPO, and State subsets, or the most frequently requested data, are being prepared on disks using common formats.

EPA is also preparing a national report on the 1987 TRI data. This report will be a summary and statistical analysis of the reported data and will be available in each congressional district from the 1,400 Federal depository libraries. At least 6,000 copies of this will be produced for additional distribution.

Now, in addition, some of the "other means" products that will be available through GPO and NTIS, we are working with these groups to extensively publicize the availability of the data systems. "Other means" TRI data will be accessible to all citizens through the depository library program which has special funding under title 44 to support this effort.

Now, I'd like to point out in closing that over the last several years, EPA has, we think, made great strides in providing additional access to our data bases, outside the formal program such as the Freedom of Information Act. For example, we have a program which is nearing completion to make sure that all State environmental agencies have direct online access to EPA data bases containing any data reported by them or about that State. We expect to have all 50 States and Puerto Rico on line to EPA's data bases by the end of this year.

We've taken a number of other steps to improve access to our technical and environmental data, including the operation of public dockets pursuant to most of the major environmental statutes, including Superfund site dockets in local communities. We also have major clearinghouse programs in hazardous waste and air toxics, for example, that serve both State and local governments, the regulated industry and the public.

I'd like to also mention the Integrated Risk Information System, which is EPA's first effort to compile and publish the authoritative information available to the Agency on the risk of specific chemicals. This represents the best peer reviewed information that EPA has on specific chemicals.

There are a number of other efforts that I could mention, but in the interest of time I'll compress my remarks.

Finally, I'd like to point out that EPA has recently renewed its commitment to international data sharing, something we haven't mentioned here today, in the belief that not only within this country but internationally the availability of environmental information is the key to wiser environmental decisions, not only by regulatory agencies, such as EPA, but more importantly by the public.

We're cautiously proud of the efforts we've taken to implement the Toxic Release Inventory, given the rapid schedule mandated by Congress. We, I think like you, are awaiting the results, which will become available later this spring.

With that, I'll conclude my remarks.

Mr. WISE. Thank you very much, Mr. Hanley.

[The prepared statement of Mr. Hanley follows:]

STATEMENT OF
EDWARD J. HANLEY
DIRECTOR
OFFICE OF INFORMATION RESOURCES MANAGEMENT
U.S. ENVIRONMENTAL PROTECTION AGENCY
BEFORE THE
SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE
AND AGRICULTURE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS

U.S HOUSE OF REPRESENTATIVES

APRIL 18, 1989

Mr. Chairman and members of the Subcommittee, I am Edward J. Hanley, Director of the Office of Information Resources Management. I appreciate this opportunity to discuss our experience to date in implementing a Congressional mandate to create a National Toxic Release Inventory and to make the Inventory available to the public. This Congressional mandate was contained in Section 313 of the Emergency Planning and Community Right To-Know-Act of 1986 (Act) (also known as SARA Title III).

The Toxic Release Inventory (TRI) lists over 300 chemicals and 20 chemical categories which are subject to annual reporting by the affected chemical manufacturers. The TRI is unique because it collects annual data on emissions to the air, water, and land on a chemical-specific basis. It provides the public, EPA, state and local governments, and industry with new data in a computerized format. The Act requires EPA to make the data "accessible by computer telecommunications and other means to any person on a cost

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reimbursable basis." EPA is preparing to make the data available to the public later this spring.

In implementing this Congressional mandate, EPA has had to confront a number of issues of interest to this Subcommittee and other federal agencies. Consequently, we welcome this opportunity to share our experiences to date. The real test of how successfully we have dealt with these issues is only now beginning as we release the data to the public for the first time. We will be glad to keep the Subcommittee informed as the program unfolds.

EPA's efforts to implement this Act have focused on the following objectives:

1. design a data collection form which accurately incorporates the breadth of information which Congress mandated be collected;
2. design an efficient computer-based data system to house the data and minimize submission errors;
3. provide the data to the public both electronically and by other means in a manner which promotes easy access and use.

Let me elaborate on how we have worked to achieve these objectives. EPA's reporting form and final reporting rule were carefully crafted to follow the Congressional blueprint for the content of the TRI database. This reporting rule was published in February 1988 to meet the goal of providing final requirements and other guidance to the regulated community before the July 1988 deadline. EPA received about 74,000 reporting forms from over 18,000 chemical facilities. The data processing of these forms continued through 1988 and early 1989.

For the first reporting year (1987), EPA conducted a pilot project for the reporting of the TRI data in magnetic media with sixty-five chemical facilities reporting by electronic media. This represented about 700 of the 74,000 reporting forms EPA received. This pilot program proved to be quite successful. EPA certainly sees the value of reporting by electronic media and is actively encouraging chemical companies to do so. The main benefits of this form of reporting include the reduction of data entry transcription errors and reduced data entry time. We believe there will be a significant increase in the number of facilities reporting electronically for reporting year 1988 (due in July 1989). We are aware of several major corporations, including Dupont Co. and Monsanto Co., that are planning to submit their data in this manner. To encourage electronic media submissions, EPA met with 30 companies and private software developers in November 1988 to discuss software development that will facilitate the private sector's use of magnetic media. EPA is reviewing software systems and providing assistance to companies/developers to inform the regulated community of this new software which will aid in magnetic media submissions.

EPA has taken steps to ensure that the data received from the reporting forms were effectively entered into the database and that

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a proper management system for the data was in place. Because we were concerned about the quality of the data that was reported, we incorporated automatic "edit checks" into the computer program to detect data omissions and errors and we plan to build more edit checks into the system for the entry of the 1988 data. In reviewing the reporting forms, EPA has used algorithm checks to pick up data entry and submission errors. In some cases, computer generated values were used to enhance the database by standardizing county names or by adding information such as Federal Information Processing Standards ("FIPS county codes") or latitude and longitude values for each zip code ("centroid") to assist in geographical studies of the data.

Regarding trade secrets, EPA published a final rule for claims made under the Act in July 1988. Currently, only 41 of the 74,000 reporting forms submitted have claims of trade secrecy. EPA's regulations require that companies substantiate their secrecy claim at the time of submission. Of the approximately 200 claims initially received, most have been withdrawn or denied following EPA review. Of the 66 data fields on the reporting form (Form R), only two fields, the chemical name and the Chemical Abstract Registry Service number (a unique standardized number assigned to a chemical), may be claimed as a trade secret. All other information on the form is available to the public. For security reasons, we have not allowed trade secret information to be reported on magnetic media to reduce the chance of inadvertent disclosure. Consequently, very little of the TRI data is claimed trade secret, which is consistent with the Congressional intent of making information about chemical releases known in the affected communities.

EPA has taken a number of steps to involve users in the decisions of how EPA provides public access to the TRI database. In March 1988, EPA issued a report regarding the available options to make the TRI database accessible to the public. A public meeting was held on March 30, 1988 to present the options available and EPA's recommended approach for making the TRI data publicly available on a database. We decided to proceed with an interagency agreement (IAG) with the National Library of Medicine (NLM) and to encourage private vendors to put the data on their systems as well. EPA selected NLM based primarily on two salient features: cost to the user of the NLM system (estimated at $18 to $25 per hour); and access to NLM's multiple complimentary toxicological and other health and safety data files. The IAG was signed in July 1988 to facilitate wider public database access. In January 1989, EPA amended the agreement to develop menus for the database to make it more "user friendly." We made these changes based on comments received at the public meetings on the proposed NLM system. EPA is planning a second amendment to the IAG which will expand the database training and outreach that we now believe is necessary for the public's maximum use of the database.

In 1987, EPA had a study conducted on the potential users of the TRI database. The potential users of this database include a broad spectrum of users including governmental officials at all levels of government; local, regional, and national organizations; consulting firms; academics; environmental attorneys; real estate agents and land developers; and local citizens. In general, the needs of the potential users can be characterized into four categories: 1) hard copies of individual forms; 2) national and state-level analyses; 3) subsets of the database in machine readable form; and 4) special analyses requiring an on-line database. For example, citizens and local government groups were interested in obtaining copies of submissions from nearby facilities, while national groups were more interested in standard national analyses and the on-line database.

Since July 1988, hard copies of the TRI data have been available on request, following Freedom of Information Act procedures, from EPA's Title III Reporting Center, in Washington D.C. This is also the data processing center. To date, over 1200 requests for the TRI data have been filled. These requests have been from various user audiences including Members of Congress or their staffs.

The NLM TRI database is being tested before it becomes publicly available. We are now, or shortly will be, testing the database at sites with two separate levels of computer searching expertise, novice and experienced. The test sites represent a geographic mix and belong to one or more of the anticipated user groups identified above. The "experienced" sites selected have users with some degree of training on NLM's TOXNET or a comparable on-line system. "User-friendly" menus designed for novice searchers with little of no computer searching experience are also being developed and will be tested at a later date.

EPA has the discretion to waive TRI database fees when this is in the public interest and consistent with the purposes of Section 313 of the Act. EPA is considering a pilot program whereby individuals or groups may apply for fee waivers through their local emergency planning committee for projects deemed to be in the public interest.

In addition to providing the TRI data through telecommunications, the Act requires EPA to make the data available through "other means." EPA plans to publish and nationally distribute the TRI in alternative formats. The 1987 TRI data will be produced in a number of formats this spring. Computer output microfiche will be distributed to each congressional district via the 1,400 Government Printing Office (GPO) Federal Depository Library program. The GPO distribution will also include over 100 national sets of data to regional depositories and state libraries. Also, over 3,300 sets of TRI state data will be distributed to non-depository county libraries. These libraries are being selected for EPA on a county-by-county basis by state librarians. Microfiche can be inexpensively, easily, and quickly duplicated by

GPO and libraries if additional copies are needed. National sets of TRI microfiche will also be distributed by EPA to the states and internally to the EPA Regional Offices, libraries, and our TRI Reporting Center, to serve the public and the Title III telephone hotlines.

EPA is planning to use for TRI distribution the Compact Disc-Read Only Memory (CD-ROM) system. The CD-ROM distribution is a pilot project of the U.S. Congressional Joint Committee on Printing (JCP) and the GPO to apply optical publishing technology to dissemination of government data. The TRI data on compact discs will be the first of the JCP's projects to be completed. Distribution will be to 400 federal depository libraries. In addition, EPA plans to prepare 300 discs for distribution to 200 non-depository research and academic libraries and for internal distribution to EPA Regional Offices, libraries, the TRI Reporting Center, and Title III telephone hotlines.

A third means of information dissemination will include the use of magnetic tape that EPA will provide to the EPA Regional Offices and to requesting state offices. The tape to the full database will be available through the National Technical Information Service (NTIS) and GPO. State subsets of the most frequently requested TRI data also are being prepared on discs (DBase III or Lotus formats) and will be available to the public through the NTIS.

EPA is preparing a National Report on the 1987 TRI data. This report will be a summary and statistical analysis of the reported data and will be available in each congressional district from the 1,400 federal depository libraries. At least 6,000 copies will be produced for additional distribution.

In addition to the above distribution plan, the Act's "other means" products will be available to the public through the GPO and NTIS. EPA, along with the sales and marketing departments of the GPO and NTIS, will extensivly publicize the availability of the TRI data systems. "Other means" TRI data will be accessible nationally to all citizens through the GPO Depository Library Program whose special Title 44 appropriation funds the reproduction and distribution of government depository documents. EPA policies guarantee full public access to our information with a few valid security exceptions. EPA has made great strides since 1987 to provide the states with on-line access to all EPA databases that contain information about that state. To make this policy a reality, EPA is extending its high-speed data communications network to reach all 50 states and Puerto Rico by 1990.

In addition to TRI, EPA has a number of other long-standing efforts to improve access to technical and environmental data. These efforts include the operation of public dockets pursuant to most major environmental statutes, including Superfund site dockets in local communities, major clearing-house programs in hazardous waste and air toxics that serve both state and local government and the regulated industry, the Integrated Risk Information System (IRIS), the Hazardous Waste Data Base, and similar services available through EPA's nationwide library network.

Recently, EPA has renewed its commitment to international data sharing through the Organization for Economic Cooperation and Development (OECD) and Infoterra, a United Nations environmental information service. This commitment reflects a growing recognition of the tremendous value of EPA's information as well as of our data management processes. We anticipate a significant role in international data sharing, especially where cooperative programs are needed to address issues such as global warming and chlorofluorocarbons (CFCs) release.

CONCLUSION

Mr. Chairman, we are proud of our effort to create the Toxic Release Inventory on the rapid schedule mandated by Congress. Our user surveys indicate that there is considerable interest in the data, but the breadth of the uses to which the public and others will put the data will become known only over time. We have attempted to make the Inventory available to the public in a variety of ways including computer telecommunications. It is too early to judge the success of these public access strategies, but we are optimistic that we have made a good start at a reasonable cost to the federal government.

In summary, we believe that our mission requires public access to information obtained by EPA on the health and environmental risks of chemical substances, particularly toxic and hazardous substances. An environmentally informed public will be empowered to encourage pollution prevention and promote risk reduction efforts in local communities.

This concludes my formal statement. I will be pleased to answer any questions you may have regarding EPA's implementation of Section 313 of the Act.

Mr. **Wise**. Our final witness on this panel will be Mr. John J. Franke, Jr., Assistant Secretary for Administration of the Department of Agriculture.

STATEMENT OF JOHN J. FRANKE, JR., ASSISTANT SECRETARY FOR ADMINISTRATION, U.S. DEPARTMENT OF AGRICULTURE

Mr. **Franke**. Thank you, Mr. Chairman, members of the subcommittee.

One of my functions is the senior IRM official for the Department of Agriculture and with that management of various systems within the Department of Agriculture.

It's an opportunity we appreciate to discuss our EDI, or electronic dissemination of information system, with the subcommittee. Our full text has been submitted for your use.

We last appeared about 3 years ago before the subcommittee to discuss the system but the service just wasn't in operation yet. We were still in the planning stages. It was beginning to come to fruition, but it limited us to cover only what we wished would happen, a gleam in our eye, if you wish. We can talk now with 3 years of experience of the things we've learned since then.

A little bit on the background of our system itself. It's a bit different than normal dissemination systems perhaps. It is a public dissemination system for time sensitive and perishable data, such as news releases, market news reports, trade leads, situation and outlook reports, crop production estimates. It was developed as a departmental system as opposed to one of our agency systems. There are about 30 agencies within the Department of Agriculture, so it's well to know that this was a developed as a departmental system.

At the present time, 12 of our agencies, USDA agencies, are using EDI for their information dissemination. It provides the public with a single source for USDA data of this type. In other words, a huge amount of information coming in from market to weather to public information come in from many, many sources in many areas. So, it's a single source service is the way we look at our EDI system.

It operates on the commercial computer based time sharing service which was competitively selected. It's a menu driven system and rather easy to use. It allows users to browse through, looking at available reports or, better still, establish an order list of desired reports.

Because of the time urgencies, most users simply dial into the system from their computers and receive a dump of all the reports on their order list. They know when the crucial reports will be released, so we have a real heavy load on those days. For example, many of our market reports that are market sensitive are released only at 3 p.m. on a given day. The security until release time is extremely important. At precisely 3 p.m. Washington time, those reports are released, so we have a heavy run at 3, for example, on given days.

We provide two levels of service. Level 1 is for the commercial subscriber. Those are news media, information retailers, agribusiness, commodity market investment brokers. There are 36 of those, of which 11 are involved in further public dissemination of information. They sell a product.

Level 2 users are for our Federal agency organizations and agriculture cooperators such as State directors of agriculture and State extension directors.

The functional requirements which determine our direction were, first, based on the time sensitive nature of many of the reports and their potential effect on the markets. We needed a service which would guarantee that all users could access these reports at the same time when released to the public by the originating agency. One of the difficulties we'd had in the past years was that a market sensitive report, let's say, and because of time zones around the world, might lag moving through the world international scene, through the trade scene. Under such an informal approach, we could not assure fair and equal access.

We also didn't know how many users would be demanding concurrent access. It was obvious that a personal computer or a PC bulletin board simply would not work for us or for clients of our information, more importantly. We chose to go with a large computer based service with capacity to support potential growth, a large amount of activity. Our ultimate end users are those involved in any aspect of agriculture marketing, whether it's the farmer, the rancher, the teacher, the broker, the farm economist, the journalist, librarian, and so on. There could be thousands of such individuals and I suspect there are. We decided to rely, however, primarily on the news media and on information retailers—we call them multipliers—to develop a service to meet the needs of their own marketplace by adding other data, special analysis services or perhaps specialized data communications technology to offer more competitive cost effective service for those end users.

USDA agencies pay for the computer and communication services required to load the reports, a share of the system overhead and they pay to access reports. EDI supports our internal information sharing needs. Under earlier systems, many times an agriculture agency would enter data into a system and then had difficulty because we didn't necessarily have all of the compatibility needed. So many times our own agriculture agencies next door to one another wouldn't have equal access to information gathered by another agency.

The commercial subscribers pay for the computer timesharing services they need to access reports. We're in the process, however, of recompeting the service contract we have with Martin Marietta Data Systems. We intend to stay with the same functional system whether or not we change service contractors. For the most part, our agencies have found that EDI meets their requirements and the user community has come to like the service and to rely on it.

One continuing issue that we need to face after we recompete is monthly minimum. I describe in some detail in my full report the reasons for applying a monthly minimum for commercial subscribers when we first initiated the service. We're rethinking that policy now and have requested offerers under the recompetition to specify what monthly minimum they would require within the framework of their proposed charges. We do intend to continue paying for the loading and our share of the overhead costs associated with providing the service.

A second is the definition of cooperators which was broadened slightly to include the land grant and depository libraries. We're not sure they're even interested in immediate access to this type of data because it's principally time sensitive and perishable, whereas most of their services are more of an archival approach. But this will give them a chance, and give us a chance, to find out as we approach it.

The demand for electronic access to data continues to increase and we are trying to respond. I must point out, too, this is one of the systems for perishable data we've developed. Agriculture, again, is quite large, covers a lot of area and we have other areas of information resource management underway.

But other information dissemination issues, we made this decision initially to use the services of a commercial timesharing company rather than departmental computers. I still assume the decision was correct, but we'll revisit it after we've completed the current recompetition and start to look where EDI should go next. We know this is a moving and dynamic issue and program in process.

We have initiated an effort to address dissemination of archival data. EDI only carries current versions of time sensitive and perishable data. Before data of this type can be useful, it must be reformatted from that of a published report to a more tabular format. We found early on, again, that the format means a great deal if you're going to have easy and meaningful access to these systems.

Therefore, we're looking at other methods of dissemination and CD-ROM appears to be growing in acceptance. We're uncertain just how far we ought to go in formatting and providing software to assure the utility. Agriculture depends on a great deal of information flowing out from our sources.

So, in summary, we've been satisfied to date with our efforts to EDI up to now. We recognize the public demand for cost effective and easy access to Government data will continue to grow and we need to respond to it. We don't have all the answers today. As we continue this process, we think we'll have more.

That's the end of my presentation, Mr. Chairman. I'd be glad to answer any questions or comments you may wish.

Mr. Wise. Thank you very much, Mr. Franke.

[The prepared statement of Mr. Franke follows:]

TESTIMONY OF JOHN J. FRANKE, JR.
ASSISTANT SECRETARY FOR ADMINISTRATION
U.S. DEPARTMENT OF AGRICULTURE
BEFORE THE
GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE SUBCOMMITTEE OF THE
HOUSE COMMITTEE ON GOVERNMENT OPERATIONS
APRIL 18, 1989

Mr. Chairman, members of the Subcommittee, I appreciate the opportunity to discuss the Department of Agriculture's program for electronic dissemination of information to the public and specifically our EDI system.

When we last appeared before this subcommittee to discuss the EDI system, the service was not yet operational. We, therefore, could only talk about intention and expectations. We now have over three years of experience and are much more able to discuss what we learned.

First let me briefly review the background and special purpose for establishing the EDI system. EDI was designed to make time-sensitive and perishable data available to the public. It was a Departmental rather than agency by agency approach so that potential users of agricultural data of this type could obtain it all from a single service. While there are some differences in the reports disseminated by the various agencies, the system was designed to accommodate the basic needs of each.

Many of [illegible] SDA reports are time sensitive because of their potential significance in the marketplace. Because of this, a key functional requirement of EDI is that we must be able to guarantee that all subscribers to the service have equal access to the reports at the moment they are released. Let me cite some examples. Most of the reports from the National

Agricultural Statistics Service, Foreign Agricultural Service, and the World Agricultural Outlook Board, transmitted at 3:00 p.m. for immediate release to the users, have a potential effect on the markets. A service consisting of a bulletin board on a microcomputer, a frequently used technique for disseminating information, could not satisfy this requirement.

For some of the other agencies such as the Office of Governmental and Public Affairs, Agricultural Marketing Service, and Agricultural Stabilization and Conservation Service, the data is both time sensitive and perishable in that it loses value as it is replaced by new versions. Last week's press release has value only for its archival use. A market news report is important to the market at the time of release, but its value is only to the given product and a new report on that product will follow shortly. While these individual reports might not have quite the same broad effect on the markets, the need for timely access to them is equally important to their users.

The Situation and Outlook reports of the Economic Research Service are time sensitive for those clients who depend on the ERS analyses the moment they are released for immediate business decisions. However, those reports also tend to be much less perishable in that, for some users such as economic analysts and researchers, they continue to be important and in demand for some time.

These are just a few examples of the kinds of reports we make available through the EDI service and better explains why we selected a large time-sharing company with significant computer and data communications capacity to provide it.

A second important issue was how to best reach the various categories of users of time-sensitive and perishable data. We had envisioned when the system was designed that those interested would be representatives of organizations such as the news media, information retailers (sometimes referred to as multipliers), agribusiness, and commodity and market investment brokers. This has proven to be true. Many of these organizations obtain the agricultural data and enhance their service by adding reports with similar data from other sources, adding special services to attract clients in their selected marketplace, or with specialized communications technology to offer more competitive, cost effective service. Our approach with EDI makes use of the information retailers to meet the differing needs of the ultimate end users. This provides a cascading effect. A single transmission of a report from the EDI system could end up in the hands of hundreds of farmers.

For the news media, to offer another example, our reports represent only a portion of their source material as they reach out to their public subscribers. We try to meet their requirements for information so that they can more effectively reach the ultimate consumers of news.

We looked at the different kinds of data the Department would be disseminating and at the different kinds and levels of users that we could project and determined that a single, relatively simple menu-driven service would meet the requirements of the users described in the paragraphs above. We refer to them as LEVEL 1 users. We did not feel that we could satisfy the key functional requirements and also provide a full end user service for potentially thousands of people. The information needs among the various end user communities, such as the libraries or the small farmers, differ significantly from those of the news media or agribusiness and can better be served by information multipliers focusing on those special needs. By serving the needs of this latter group, the information multipliers, we are directly serving the needs of the former. Getting the information to the farm publication where it is more effectively evaluated and placed in context or to a local radio station or bulletin board, serves the farmer who relies on such sources for information.

There was also a practical consideration. In 1984 when we were first designing the EDI system, no other Department was considering such an effort. There were no precedents and no policy to guide us. The private sector had several well established companies that were in the business of providing agricultural information to the public and they were concerned about how we would compete with them by establishing a Federal dissemination service. That was why we decided to use their service rather than establish our own and threaten their business. In making this decision, we also recognized that we were intentionally limiting the number of potential

There is one other important aspect of the EDI system that should be described. We have a need to share data among our agencies. This is particularly true of the many USDA field offices and state organizations with whom we cooperate. To accommodate their needs, we included what we call a LEVEL 2 service so that they can obtain these USDA reports directly from the EDI service. Cooperators currently include non-USDA Federal agencies such as BLS, TVA, CIA, AID, and BEA; state Departments of Agriculture; state extension directors, state universities; and we just signed up our first state governor (South Dakota). I would like to return to the issues of cost in just a few minutes.

The use of the EDI system has been increasing slowly, but consistently since its inception. Some more detailed usage statistics are provided in the attached tables. The following highlight some of these:

- There are currently 36 LEVEL 1 subscribers of EDI. Of these, 11 are in the news or information marketing business. This represents about a doubling since the first year of operation.

- While data accessed by cooperators currently represents about one-fourth of the total, their usage has grown faster than that of the Level 1 users. This has been particularly true of the state offices. One of their key interests is in the FAS Tradeleads. Another example is Virginia Tech where they have implemented a major state dissemination service with reports acquired from EDI.

- Seven USDA agencies initially used EDI for their information dissemination program. Now there are 12. In addition, the Department of the Interior is distributing press releases through EDI.

- In 1988, USDA agencies loaded over two million lines of data. On an average each line was accessed over four times. There were some differences among agencies and type of data. These numbers can be misleading because of the multiplying effect. Many of those organizations accessing reports deliver the information to hundreds or thousands of end users.

- USDA pays for loading its data and shares the system administration costs with the commercial subscribers. These costs have decreased when computed per line loaded because the overhead is allocated across more users. During the last two years, the entire Department spent under $70,000 each year ($62,000 in 1987 and $66,000 in 1988) for system overhead and direct loading charges.

- Monthly minimum - LEVEL 2 users pay only for the computer time-sharing services they require for accessing reports. LEVEL 1 subscribers currently pay a monthly minimum of $150. This was instituted for several reasons:
  - The requirement for equal and immediate access which adds to the total cost of the system operation, was much more important to the

LEVEL 1 than the LEVEL 2 clients. They are, therefore, paying in part for this extra service. For the larger users, it doesn't affect their costs because they spend that much anyway.

- Some monthly minimum is required just to cover the costs of billing. The LEVEL 1 users are billed directly under separate contract with MMDS. The LEVEL 2 users are billed through USDA with a single bill which is allocated back to each organization.
- When we first announced plans for the EDI system in 1984, there was genuine concern among private sector companies already in the business of disseminating agricultural data that we were establishing a government service in direct competition with them. The monthly minimum allayed their fears which allowed us to go ahead with our plans.

We are currently in the process of recompeting the procurement for time-sharing services. Our contract with Martin Marietta Data Systems will end on October 1, 1989. We decided that we are not ready to make any major changes to our dissemination approach and therefore are specifying in the Request for Proposals (RFP) that any offerors should provide us with exactly the same service and that any change in vendor will be transparent to the users. We have made the application software available to all bidders so that they do not need to go through any major development effort. The need for reliable continuous service is crucial to the subscribers who have come to depend on EDI for their information needs.

As I mentioned, the current EDI service charges the commercial subscribers a monthly minimum of $150. However, we are now rethinking this policy and have requested offerors under the recompetition to specify what monthly minimum they would require within the framework of their proposed charges. Because the USDA agencies feel that they have a responsibility to make their information available to the public in a timely and effective manner, they will continue to pay for the loading and share the overhead costs associated with the service. We are trying to strike a balance between the charges we pay and those charged to the commercial subscribers.

In the recompetition RFP we have broadened the definition of cooperators to specifically include the land-grant college and depository libraries. Unfortunately, a problem arises with small volume users because the actual cost of billing exceeds the value of their use. It remains to be seen whether libraries have much interest in the time-sensitive and perishable data. In our discussions with them, their concerns seem to be more with the archival data.

I should also mention, Mr. Chairman, the Agricultural Marketing Service (AMS) market news system. This is primarily an internal system where market reports are transmitted from and to the various AMS field offices. I refer to it as "primarily" an internal service because they do have some private sector companies receiving reports that have been traditional long time users of the market news reports. AMS also makes a limited number of reports available through the EDI system. AMS recently installed VSAT's (these are small satellite receivers) at their field locations to provide a more economical method for receiving reports from a satellite directly into the field office microcomputers.

Informing the public of the existence of the EDI service is always an area of concern for us. We still publish hardcopy reports and put notices in them of the availability of the electronic service. We put out press releases whenever newsworthy changes are made. Periodic data users meetings are held around the country by some of the agencies to hear from some of the traditional users of USDA data. Whenever the opportunity arises, we give demonstrations or presentations on the EDI service. Of course, we are in constant contact with our current users, but need to continue seeking those who haven't heard of the availability of the EDI service.

We have learned that it takes a long time to get the message out and it requires a lot of repetition. The message isn't really heard until the need is recognized. Even when the demand for electronic transmission is real, it often takes time for an organization to change the way they do business to accommodate the technology. But the converse is also true; once they start accepting data electronically, they want access to more and they don't want to go back to dealing with hardcopy.

What is next for us? I mentioned that we will be selecting a contractor to continue the current EDI service. We will then revisit the functional requirements and policy decisions that guided our initial effort. It may be that our decision not to use our own Departmental computer centers for providing the service should be changed. We are also interested in technology changes in both computers and data communications methods that might open new, more cost effective alternatives to us. These are issues we will address in the next year.

EDI only meets a small part of our information dissemination requirement. It essentially provides an electronic copy of a hardcopy report. On EDI, we only retain current versions and delete them from the system anywhere between 48 hours and one month after release, depending on the report. The originating agencies are responsible for retaining the history copies of these reports, and, as I mentioned, many of them are also available in published form. However, there is a demand for the previous versions of reports, particularly of the statistical data. In order to present these data in a meaningful time-series format, they have to be converted and combined into appropriately coded tables. We are looking at dissemination alternatives for the time series data. While online databases are desirable from the viewpoint of many users, that is an expensive alternative. We have some minor efforts going to disseminate on floppy diskette and we are seriously considering CD-ROM with some basic software to allow the user some search capability.

Our current dissemination efforts have taught us that the public demand for cost effective and easy access to government data will continue to grow and we need to respond. We shall continue, Mr. Chairman, to identify the best technology available to us and to evaluate policy decisions that affect this effort.

AGENCY SUMMARY TABLE

(Number of lines)

	Annual Total		September		
	FY 1988	FY 1987	1988	1987	1986
AMS:					
Loaded	775,954	609,422	81,316	52,245	53,412
L-1 Access	564,755	344,554	43,787	63,730	848
L-2 Access	175,839	24,671	14,054	1,776	5,929
ARS					
Loaded	5,858	3,753	--	--	--
L-1 Access	18,946	10,603	--	--	--
L-2 Access	10,018	6,145	--	--	--
ASCS:					
Loaded	70,433	16,110	6,399	1,732	--
L-1 Access	152,744	68,558	15,764	4,627	--
L-2 Access	40,655	14,839	1,930	1,137	--
ERS:					
Loaded	391,205	329,570	59,901	44,918	25,391
L-1 Access	797,952	536,241	100,631	32,741	110,456
L-2 Access	126,218	63,010	10,677	5,034	8,489
ES:					
Loaded	9,318	15,221	598	498	2,135
L-1 Access	37,002	45,832	2,483	1,758	2,558
L-2 Access	9,120	10,470	457	56	5,237
FAS:					
Loaded	259,074	236,061	24,581	21,237	18,143
L-1 Access	1,560,907	1,192,962	157,264	111,897	69,984
L-2 Access	387,940	119,460	31,711	14,738	9,850
NASS:					
Loaded	390,359	321,612	32,810	33,178	19,939
L-1 Access	1,773,751	1,248,066	162,129	107,669	97,714
L-2 Access	730,710	308,109	62,404	36,307	5,973
OGPA:					
Loaded	153,172	105,749	13,505	19,877	7,318
L-1 Access	673,090	413,882	59,223	51,025	25,343
L-2 Access	252,196	183,351	17,941	18,487	12,120
OT:					
Loaded	1,325	422	--	--	--
L-1 Access	2,351	1,534	--	--	--
L-2 Access	2,363	1,284	--	--	--
WAOB:					
Loaded	52,159	50,045	3,969	3,897	2,589
L-1 Access	349,125	231,872	34,257	17,406	18,606
L-2 Access	142,866	22,468	12,179	5,602	1,874

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EDI USAGE SUMMARY TABLE

	Annual Total		September		
	FY 1988	FY 1987	1988	1987	1986
Number of Lines					
USDA Total:					
Loaded	2,108,857	1,687,965	223,079	177,582	128,927
L-1 Access	5,930,623	4,094,104	575,538	390,853	325,509
L-2 Access	1,877,925	753,807	151,353	86,137	49,472
Total Accessed	7,808,548	4,847,911	726,891	476,990	374,981
MMDS Billing					
Usage Charges:					
Total EDI	$121,892	$93,465	$15,339	$9,060	$7,291
Rebate	10,470	7,714	1,036	780	816
Cooperator Charges	6,509	2,792	422	208	101
Total USDA	$104,913	$82,959	$13,881	$8,072	$6,374
USDA Cost by Function:					
Administration and Loading	$66,339	$61,765	$ 9,332	$5,875	$4,184
Level 2 User Access	38,574	21,193	4,549	2,197	2,190
Total	$104,913	$82,958	$13,881	$8,072	$6,374

Mr. **Wise**. Some questions, first of all. EPA has already addressed this. Speaking of depository libraries, what arrangements have you, the SEC, and the Department of Agriculture, made to provide records in your agency system to depository libraries? And second, the followup is, have depository libraries shown interest in this information?

Mr. **Penhollow**. We have made no efforts with regard to the electronic version of the filings to make those available to the depository libraries at this time. In the past, I understand the agency offered copies of the microfiche to the libraries and at that time, as I understand it, the librarians really didn't show any interest in receiving microfiche.

Mr. **Franke**. With regard to the Department of Agriculture, our National Agriculture Library does have the principal lead in this, in their contact with depository libraries and other interested libraries and information gatherers. They have an interactive system.

It's a question, though, of how much that's accessed and how much it's actually used, what the interest level is other than perhaps a university system to those that are directly involved in Agriculture matters. As we get more into environmental issues, it is absolutely demanded we have a greater flow of information between EPA, between Agriculture, between our library systems. It's essential that happen.

Mr. **Wise**. To the SEC, how have the provisions included in the SEC Authorization Act of 1987 affected the development or procurement of the EDGAR system? Have you had any real problems caused by the requirements?

Mr. **Penhollow**. Mr. Chairman, it did have an impact on the procurement. I wouldn't say that we've had any serious problems. There were some adjustments made in the RFP as a consequence of that act, but we had, in fact, some of the requirements of the act with regard to the uniform schedule of fees already in mind. We did incorporate into the RFP the requirements on equally available on equal terms. Those requirements were part of the RFP at the time best and final proposals were submitted.

Mr. **Wise**. To the EPA and Department of Agriculture, I'd like to ask how your agency's information system might be affected by some of the requirements now applying to EDGAR. EDGAR information must be equally available on equal terms to all persons. Would that create a problem to either of the other two agencies? EPA? Mr. Hanley.

Mr. **Hanley**. I don't believe that would be any problem. In fact, increasingly, and I think especially under our new Administrator, our position is that public access to information and in a number of cases, aggressive efforts by the agency to make data available is very important to our mission. Obviously, an informed public is empowered to take action to prevent pollution and to reduce risks in their community rather than sole reliance on the formal regulation which has characterized a number of environmental programs up to this point.

So, equal access, to my knowledge, has not been an issue, other than the issues that have been discussed already in terms of means. We are facing a number of what we consider primarily practical problems, how do you do it rather than these policy questions of should we do it and at what cost.

Mr. **Wise**. Mr. Franke.

Mr. **Franke**. If you are referring specifically to the EDI System, equal access to the Service is paramount to our design approach. We require that capability. When looking at the broader issues of all information sharing, it would pose a difficulty for the Agriculture Department at this time. First of all, just the cultural approach. We began with automation and spending a lot of money on it throughout the State, local, and Federal governments as a replacement for a ballpoint pen, if you will, a quicker method of doing our own work.

Most of our systems were devised around how we handle our own business, how we move things quicker, retrieve them quicker, store them easier, much less expensive. The systems we've built, we have about 15,000 offices in Agriculture. Presently we have probably 8,000 or 9,000 around the country that are automated. The program time that our field managers use around the country is very limited now. They spent a lot of time in developing farm programs, responding to initiatives, to statutes, to things of that nature, developing information, storing it and in fact at the same time learning the system.

I personally think this brings a new element into the thinking of most Federal field managers. They hadn't quite looked upon it from the perception and from the light of equal access. They do it. A farmer asks for a layout of his farm to come before the ASCS Board. The Farmers Home people have access to that to compare it to a loan. Federal Crop Insurance people can look for that same information with regard to the Federal crop insurance site. So they share it with that farmer.

The question of equal accessing, what we would have to do or what kind of additional training or cultural affect that would have on a huge field office could pose a difficulty if things were plugged in immediately.

Over the long haul, I think that's what we're about, to make certain information gets out. But we all have a tendency to look at our own pasture first and to make sure that our particular office and our field office and county office is what we're handling our own work. So, in the beginning, I think it could well be an imposition and be difficult. Over the long haul, I think it's absolutely required and essential.

Mr **Wise**. Mr. Schiff.

Mr. **Schiff**. Mr. Chairman, I have no questions. I just want to observe that notwithstanding my obvious disagreement that rap sheets should be made public, I do think Government should otherwise publicly. I gather from the agencies represented here that they're striving. They're striving not only to make information more available to their own agency employees, but to the public users who wish to know what their agency is doing. I just want to say I applaud that and am glad you're here today.

Thank you, Mr. Chairman.

Mr. **Wise**. Thank you, Mr. Schiff.

Now I'm going to make you all a deal. I'm going to let you off this panel right now if you'll promise to send back in writing replies to five questions that I'm going to submit to all of you.

Mr. **Penhollow**. Scout's honor.

Mr. **Hanley**. That sounds like a good deal.

Mr. **Wise**. All right. I didn't tell you that I have to go to a caucus at some point in the near future too. But I do have a lot more—not a lot more questions but there are five more questions and I'll just submit them in writing and we'll appreciate your responding and we'll make them part of the record. [See app. 1.]

Thank you very much.

Our next panel. We are fortunate to have with us three persons who have also done a lot of work in information issues. We will have joining us at the panel table Jerry Berman, Benton Foundation fellow, director of the Information Technology Project, American Civil Liberties Union; Dr. Alan F. Westin, professor of public law and government, Columbia University and chairman of the Reference Point Foundation; and Kenneth Allen, senior vice president, government relations for the Information Industry Association.

Mr. Schiff, this is where you get the other side of the *Reporters Committee* case.

If you all would stand and let me swear you in.

[Witnesses sworn.]

Mr. **Wise**. All of your statements, and I appreciate also your accompanying material, will be made part of the record. Let's see what this is.

As you can see, discord has rent us apart. We will take a recess to vote on this issue and we'll be back in 15 minutes.

[Recess taken.]

Mr. **Wise**. I appreciate the panel's indulgence. As I was saying when the bell rang, your statements are all made part of the record and please feel free to summarize in any way you'd like.

Mr. Berman, if you'd like to kick off.

STATEMENT OF JERRY J. BERMAN, BENTON FOUNDATION FELLOW, AND DIRECTOR, INFORMATION TECHNOLOGY PROJECT, AMERICAN CIVIL LIBERTIES UNION

Mr. **Berman**. Thank you, Mr. Chairman. I want to thank you for inviting me to testify on Federal information policies and practices.

Today I want to focus my remarks on what I think has been a common theme of all the witnesses, which is the fundamental Federal information policy issue which needs to be resolved, and that's public access to electronic Government information.

The witness that brought up the *Reporters Committee* case, I think that we disagree on the reading of that case. We believe that the underlying principal of electronic information policy is that information which is widely available in published form ought to be available in computerized form. But that simply is not the case with arrest records and has not been because of the balancing of other public interests; namely, the privacy interests of individuals. So, we do not view the *Reporters Committee* case as a serious adverse precedent for public access to electronic information. But we can come back to that.

Mr. Chairman, the first principle and goal of Federal information policy was to maintain and enhance the public's right to know. I submit that in our modern computer society, this right will only be guaranteed if public policy and law establish broad and equitable access to electronic as well as published Government public information.

As this committee is well aware and as the other witnesses have testified, a revolution is taking place in the way the Federal Government collects, stores, and disseminates Government information. Over the last two decades, information has been converted from published documents and data into electronic data bases and Government agencies regularly use that computer technology to perform agency missions. And increasingly, as the agency witnesses have testified, Government is disseminating public information electronically through both Government and commercial data base services.

Yet, despite this transformation of information, Federal law does not spell out clear public access rights to electronic public information. Enacted prior to extensive Government computerization and before the PC revolution brought computing power to most citizens, Federal information laws from the Printing Act to the Freedom of Information Act to the Paperwork Reduction Act, established a public right of access to printed Government information, including printouts from Government computer files, but uncertain public access rights to electronic public information.

This uncertain status, instead of enhancing the public's right to know through the use of new technology, is instead creating new barriers to public access, new inequities and new dislocations.

I'm here really to say that I want to applaud this committee. It's taken the leadership in addressing this issue. Three years ago it issued a seminal report on electronic dissemination. These laws need to be looked at, Federal practices have to be looked at, and I applaud you for calling these hearings and beginning an inquiry.

I think that there is now broad agreement, from the information industry, to the librarians, to the Office of Technology Assessment, to a broad coalition of public interest groups, that this examination is critical and that we need to establish a public right of access to electronic as well as published public information and to make public access to electronic public information a central goal of Federal information policy.

Briefly, to describe some of the barriers that the uncertainty of current law is creating, I want to talk about two kinds of information. First there's information which the Government actively disseminates, pursuant to statute or policy or agency mission, and even under the Freedom of Information Act. Then there's a second category of information which the Government makes accessible under the Freedom of Information Act. Both categories of information in electronic form are causing problems for public access.

Today the Government, for example, disseminates more and more information electronically. You've heard from the Securities and Exchange Commission. The EPA was here and talked about the MEDLAR System. The EDI from the Agriculture Department.

You can go on agency by agency. Many of these systems are on line. They're available on diskette or CD-ROM and they're available sometimes from the Government, sometimes through commercial firms which add value and make it more useful and sell it to the public.

Now, these enhancements, these developments, enhance the ability of those who access the information to learn about the Government and how it functions. Users gain access to the most time sensitive data, rapidly search through documents or statistical data bases, seek out and quickly find relevant public information and work with subsets of electronic public data to do complicated statistical and data analysis. The reporters testified on how many interesting stories have come from computer analysis.

But as we observe this emerging world of electronic Government data bases, it's apparent that the benefits are not being equitably shared and widely shared by the public at large. The major users of electronic information are government, business, and the scientific community. Most of the major developments in the Federal Government of electronic data systems are occurring in the regulatory and business area, Trademark Office, Federal Communications Commission, Securities and Exchange Commission. In fact, when they tout the first paperless agency, it's going to be the Securities and Exchange Commission which will handle 6 million filings at a cost of $50 million per year.

It's significant and I think it's important. I'm not saying that this shouldn't happen, but there are no similar developments at HUD, HHS, Justice Department, and even EPA has only one example, the TRI data base.

I think this uneven development proceeds directly from current Federal information policy. That policy was established in 1980, pursuant to the Paperwork Reduction Act. That act mandates that OMB develop Federal information management policies, but the clear purpose and objective of the act is to reduce Government costs and burdens of Federal paperwork. While it talks about computerization, the act explicitly states that it's to be used as a means for making Government information functions less costly and more efficient rather than as a means for maximizing public access to information.

This has been spelled out in regulation 1985, Circular A-130. While the circular recognizes the value of public information and states that the right to access Government information must be protected, its underlying assumption is that citizen access rights are satisfied if they have access to the published information. Electronic public information and its dissemination are treated as a secondary form of discretionary Government information which may only be employed by agencies if it achieves cost savings and efficiencies.

Now, therefore, under this policy, you develop electronic dissemination systems which are structured in a way that make it detrimental to public access. For example, agencies may be discouraged from duplicating a private sector data base which is like the Government data base or a potential Government data base even though the private data base may be priced beyond where citizens can afford it. There's no writ under Federal information policy to provide fee waivers or reduced costs to make electronic information accessible to citizens who can't afford it, as occurs under the Freedom of Information Act. There is a tendency of the policy to encourage the development of electronic dissemination systems only when they're commercially viable, since commercial firms will not undertake the investment unless they have a market for their product.

So, critical data bases for Health, Education and Welfare are not funded. In fact, the Government does not even provide an index of the 440 public electronic data bases that it has so that the public can even find where they are.

Now, the Paperwork Reduction Act and OMB Circular A-130 do carry out important goals, to avoid duplication, avoid wasting funds. These are worthy goals and they're incorporated, for example, in the EDGAR system which this committee worked very hard to insure against the possibility of the Government monopolizing information or any private contractor monopolizing information. But the EDGAR model and current policy do not insure public access. They depend too much on market forces and the iffy proposition of data bases being commercially viable. If you follow that model, important data bases at HEW, HHS and Justice are not going to be developed. Even if they are, they may be priced beyond where citizens can afford them.

Now, this policy may have been valid 10 years ago, but it's absolutely invalid today and has to be changed. It exacerbates inequities between the information rich and the information poor.

The best quote which supports this is from OMB which recently, in January, issued supplementary regulations to A-130. Unfortunately, those regulations, which I think will be withdrawn, spell out when the Government shouldn't publish electronic information rather than when the Government should publish electronic information. It does include an interesting statement. It says electronic information is now becoming the primary information, not secondary. "Supplying the information on paper is sometimes practically useful, particularly when the volume of information is large and computer search and retrieval capabilities are essential to efficient use. Moreover, the printed product does not satisfy all legitimate user needs as well as the entire body of information in electronic medium."

I submit that the current Paperwork Reduction Act has to be rewritten to pursue and incorporate a goal of insuring public access to information. That does not mean that the Government publishes all the information. It means there are partnerships between the public and private sector. We need a diversity of information sources. We need public and private partnerships. I think that the factors that are now considered under present policy can drive a public access goal for information dissemination.

An example of this is the EPA data base. Here the data base mandated by Congress is to be accessible by citizens, which provides for the possibility of fee waivers and reduced costs. Here, where public access is the goal of the data base, you can see citizen empowerment in the age of electronic information. Citizens will be able to, in EPA's own words, sit down at their computer at their local library or their local community in West Virginia, dial up this data base, find out about toxics in their environment, take action on it, call a campaign, get in touch with their Congressmen. They bypass the traditional modes of information.

This is revolutionary, but it's only occurring because Congress mandated for this one data base and it is not the access policy that applies across the board to other data bases.

Now, quickly, let me say that the problems that I have talked about with respect to dissemination also apply to access issues. Here the Government is not actively disseminating information, but as in the Reporters Committee examples this morning, the Government makes it accessible under the act. Again, the Freedom of Information Act was passed prior to the PC revolution. It was last amended in a significant way in 1974. It establishes the public right of access to published information and to records from computerized files, but it doesn't clearly say that all public computers have to be programmed to make the information accessible in both published and electronic form, nor does it give citizens the choice. We want the electronic version of the information versus the published.

This is beginning to have discontinuities as it's being applied by agencies. A public citizen files a lawsuit to go after OSHA inspection data. It's now been put into a computer file. OSHA says, "You have to pay for the reprogramming costs for information which would otherwise be free." Eventually they reprogram the computer and release the data, but up until then it goes down the black hole of the computer rather than enhancing public access.

The National Security Archive files a lawsuit seeking records from the Energy Department. Because the Energy Department didn't have the public records accessible electronically they just wrote back, "No record." That is the kind of potential new secrecy under interpretations and I think some misinterpretations of the reach of the Freedom of Information Act.

We're involved in litigation with National Security Archives and Public Citizen to try and establish that the Iran-Contra records are subject to the Archival Records and Freedom of Information Act. The Government has taken the position that because they're electronic records, even though they were at the heart of that whole affair, they're not records subject to the Freedom of Information Act because they haven't been published.

Recently and finally, defense agencies worried about the Soviets gaining access to classified information by putting together unclassified computer data in the public domain. They began to say, "Well, the solution to that is to take the electronic version of the information out of the public sector because citizens only have a right to the published version."

Fortunately, this committee, the Information Industry Association, the library community, and others fought this proposal by the Defense Department and it's been stalled so far. But it points out that we have discontinuities and new barriers and new inequities and that we need to take a serious look at this information, explore the possibility of establishing clear right of access under the Freedom of Information Act, setting forth standards to make public access to electronic information a goal of the Paperwork Reduction Act when it's reauthorized this year.

In conclusion, Mr. Chairman, I believe we are now beginning a serious dialog on the shape of the public's right to know for the 21st century. Many issues need to be debated and resolved. If we are to secure these rights and the benefits that flow from our modern computer society, it will take a concerted effort by the Congress, enlightened public officials, public interest groups, librarians, and the information industry to develop new policy initiatives and a consensus for workable reform.

Thank you.

Mr. Wise. Thank you very much, Mr. Berman.

[The prepared statement of Mr. Berman follows:]

COMMUNICATIONS POLICY AND THE PUBLIC'S RIGHT TO KNOW

PUBLIC ACCESS TO ELECTRONIC PUBLIC INFORMATION

BY

JERRY J. BERMAN

TO BE PUBLISHED BY
THE MARKLE FOUNDATION
JUNE 1989

116 611

COMMUNICATIONS POLICY AND THE PUBLIC'S RIGHT TO KNOW
PUBLIC ACCESS TO ELECTRONIC PUBLIC INFORMATION

BY

JERRY J. BERMAN

I. Introduction

The "public's right-to-know" about the business of government is a fundamental principle of our democratic government and open society. In the present era of computerized government information, this right will only be insured if public law and policy guarantee and expand citizen access to *electronic* public information.*

Over the past two decades, the federal government has systematically exploited computer and communications technology to conduct its business more effectively, efficiently, and economically. In the process, federal agencies have converted public information from paper documents and data files into electronic database systems. Federal agencies routinely manipulate this computer data to fulfill agency missions from determining the taxes owed by citizens to calculating eligibility for social security benefits. A growing number of agencies require businesses and corporations to provide data collected for regulatory purposes in electronic formats and in turn the government fulfills its information disclosure responsibilities by disseminating electronic public information through government, commercial, and non-profit interactive computer and communications networks.

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* In this essay *public information* is defined as federal government information which is either disseminated by federal agencies or which must be disclosed under the laws of the United States. Thus, it does not include government created or collected information which is exempt from disclosure under the Freedom of Information Act, such as classified national security information or personally identifiable information which would violate individual privacy. Citizen access to electronic public information under state law is beyond the scope of this essay.

This fundamental transformation of public information and public decision-making into computerized data processes has occurred without serious public policy attention being paid to how it may affect the public's right to know. Moreover, there has been no public policy debate or concerted effort initiated to resolve electronic information policy issues with citizen access rights as a core concern.

This debate is of critical importance today. As federal officials tout the potential emergence of wholly "paperless" agencies by the year 2000, the laws and policies that spell out citizen access rights to government information in the age of electronic government are woefully out of date. The Freedom of Information Act, the principal federal information access statute, was enacted prior to this full-scale government computerization and was crafted to resolve citizen access rights to published information or to printouts from computerized files.

The Paperwork Reduction Act of 1980 was designed to stream-line federal information resource management in part through increased government computerization. The Act offers little guidance on how federal information management goals should be achieved in relation to public access rights to electronic information.

When these statutes were enacted, it was valid to assume that government policy did not have to consider such a right of access. The ability to own and use powerful computers capable of receiving, storing, and manipulating government electronic data was beyond the economic and technical reach of most of the constituencies that seek and use government information to conduct their business or monitor government decision-making. In the last several years, however, the "PC Revolution" has brought advanced computing power within the reach of most citizens and organizations who use government data. Today, small businesses, public interest groups, the press, and other users of government information do not have to rely solely on published public information or "printouts" of computerized government data. They possess the technical potential for receiving and analyzing electronic public information.

If this potential is to be realized, the constituencies that principally rely on published government information first need to understand their stake in achieving effective access to electronic public information. Public policy that supports citizen access rights to electronic information will not be instituted until constituencies committed to the public access rights actively work to formulate and implement such a policy.

A principal purpose of this essay is to describe through concrete examples how citizen access to computerized government data can be a powerful tool for monitoring government and private sector decision-making which affect important public interests. The Environmental Protection Agency's effort to implement a congressionally mandated database to disseminate information on toxic chemical emissions into the environment will provide a vivid case in point.

The case for new electronic information policy also involves public awareness of how traditional access to published government information, as well as computerized public data, may be compromised if public rights to electronic information are not instituted. As this essay documents, outmoded government information law and policies are creating new forms of government secrecy in the computer age and inequities between different constituencies in terms of their ability to afford, access, and use electronic public information.

To establish why expanding public access to electronic public information through on-line databases and other information technology mediums should be a public policy goal is only the first step.** Significant legal, policy, and practical issues need to be addressed and resolved by the Congress and the

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**Throughout this essay, public access to electronic public information should be understood to broadly include access to public information available through online databases, tape, floppy diskette, CD Rom, or other electronic storage mediums.

Executive Branch before effective access will be realized. This essay attempts to identify some of the critical electronic information access issues and sets out a number of policy initiatives and proposals for addressing them. It also recommends policy initiatives to achieve the ultimate goal---an "electronic" Freedom of Information Act.

II. Electronic Government and Who It Serves

The federal government today is ushering in the era of electronic government by developing electronic information collection, processing, and dissemination systems. Federal government expenditures for information technology and electronic data systems are increasing at a significant rate. In 1982 the federal government spent $9.2 billion for information technology. Recent estimates indicate that expenditures for electronic data systems have now reached over $15 billion annually.[1]

As the government transforms public information into electronic formats and databases, this information is then made available to the public by government and commercial information providers.[2] By one estimate, there are over 440 government databases disseminating electronic information to the public today.[3] The Commerce and Labor departments provide on-line databases of significant business and labor statistics and reports. The Census Bureau makes statistical data and reports available over its CENDATA system. The Commerce Department's National Technical Information System (NTIS) distributes tapes and diskettes of scientific research reports and statistics. The

National Library of Medicine, a government agency which markets information in many ways similar to a commercial firm, offers a number of on-line technical information databases through its MEDLARS electronic dissemination system.[4]

Commercial information industry providers such as DIALOG, MEAD Data, and BRS are principal disseminators of electronic public information.[5] As government data increasingly resides in electronic mediums, these firms actively seek out and obtain government computerized data, add "value enhancements" to make the data more useful and "user-friendly" and sell it to commercial subscribers. They also serve as "gateways" for public systems by offering their subscribers many of the government databases available directly from federal agencies.[6]

The development of these public electronic databases greatly enhances the ability of those who access these government and commercial systems to monitor government activity and regulatory affairs. They permit users to access time-sensitive data, search through document databases to seek out and rapidly find relevant information, and work with data subsets to perform complicated statistical and data analysis.[7]

If the federal government's development of electronic public information systems were guided by an overall policy to enhance public access, one would expect to find evidence of government-wide programs to implement electronic data systems to serve a cross-section of public constituencies. For example, one might find major electronic projects underway not only to disseminate information about business, scientific, and business regulatory affairs but also electronic data relating to government programs and decision-making in areas such as environmental protection, law enforcement, and occupational health and safety. In developing these databases, policymakers would be wrestling with issues of pricing to insure that interested constituencies could afford to use these information systems. They would also be exploring necessary system requirements to make these databases readily accessible to computer users who are not proficient in computer skills.

Instead of government-wide programs, the major federal agency electronic collection and dissemination systems under development are concentrated in the business and regulatory area. Significant federal expenditures are targeted for the development of electronic systems such as the Patent Office's Automated Trademark System, the Federal Maritime Commission's electronic tariff filing system, the Department of Transportation's International Tariff Filings, and the Security and Exchange Commission's Electronic Data Gathering System (EDGAR).[8] For example the EDGAR system, which will handle over 6 million pages of security filings per year, making the SEC potentially the first "paperless" agency of the future, will cost $50 million dollars over the next five years.[9]

While the development of these systems will serve important governmental interests, the principal government policy objective has been to improve the efficiency and cost effectiveness of its regulatory operations. These systems have that potential because there are commercial markets for this information since it is vital to business and regulated industries. This potential in turn has spurred members of the growing information industry to develop partnerships with government to design and build these major systems and to work to structure them in ways which will permit them to develop commercial markets for this data.[10]

The government's preoccupation with cost savings over public access considerations is amply demonstrated by the initial efforts to establish an Automated Trademark Office. Even though the rates charged for electronic databases are a major factor in determining who may be in a position to afford to use them, the Patent and Trademark Office tried to minimize the government's cost to develop an Automated Trademark system but in a way which would make it expensive for potential users. As documented in a House Government Operations Report, the Patent and Trademark Office attempted to satisfy its internal needs for electronic trademark data by entering an agreement with a private information contractor under which the Trademark Office would use the system at no cost in exchange for which the private contractor would have the exclusive right to sell the electronic trademark data to all others under non-competitive conditions. This "bartering" arrangement, which had the potential for creating a private information monopoly over electronic trademark data, was successfully opposed by a members of Congress, user groups, and other information vendors.[11]

In contrast, the SEC's EDGAR system has been designed to meet government needs for electronic data but to broaden public access to EDGAR data through a diversity of information sources and competitive pricing. EDGAR, the product of give-and-take between SEC officials, the Congress, and information industry representatives, is viewed as a possible model for future electronic information systems.[12]

As structured, the SEC will expend appropriated funds to establish the basic EDGAR system. All "value-added enhancements", such as sophisticated search capabilities and menus which make the system user-friendly, will be developed by the contractor who markets the EDGAR data commercially. However, to prevent the development of a private information monopoly and create a "level playing field" among competitors, the statute governing EDGAR mandates that other information vendors may purchase the EDGAR data at the marginal cost of reproduction, add-value enhancements, and also market the data. As the information will be available through a diversity of sources, it is anticipated that competitive pricing will make the system affordable to many potential users.[13]

The EDGAR system constitutes an important step in the development of electronic information policy options because it avoids the creation of an information monopoly and insures a diversity of EDGAR data sources. However, it does not resolve critical issues about how to design and implement electronic information systems that insure broad public access to electronic information.

While the public at large may be uninterested in security filings and studying "10-K forms," public interest groups, investigative reporters, and academic researchers may well want access to this information. While competition among vendors may bring the cost of the EDGAR database systems within the reach of the general public, there is no guarantee that it will. If it does not, the government will in effect have developed a sophisticated information system which disseminates the most useful version of public information only to the affluent.

The EDGAR system's provision for general public access to the database demonstrates this point. While the commercial user "dials-up", "down-loads", and manipulates EDGAR data, the public user who may not be able to afford these services may use public terminals. However, they are available at only three locations---the SEC Headquarters in Washington, D.C. and at its New York and Chicago regional offices.[14] Of course, not all interested users are located within easy reach of these SEC reference rooms. Moreover, the system will be a basic version of EDGAR which permits reading files and searching through the database but will have none of the "value-added" enhancements, such as analysis capability which likely will be available through the commercial systems.[15]

This may be adequate public access for security data. However, it will not be sufficient for meeting public access needs for the electronic dissemination of data of importance to wider public constituencies. For example, EDGAR's public access requirements would not provide sufficient public access to electronic data disseminated by agencies such as the Food and Drug Administration[16] or the Environmental Protection Agency.[17]

The larger issue is whether electronic data systems will only be developed when the system is cost-effective because there is a ready commercial market for the information. If this is the case, it is difficult to foresee the circumstances under which the government will develop major systems on its own initiative dealing with health, education, and welfare---areas of vital public importance but where the profitability of electronic data dissemination is uncertain. In such circumstances, public access and use may have to be underwritten by "fee waivers" or reduced fees similar to those available under the Freedom of Information Act.[18]

One response is that the federal government is establishing electronic information systems responsive to broader public interests. In fact, a few government agencies are making efforts to provide citizens with inexpensive on-line databases of public information and reports.[19] These include agencies which have a statutory obligation to disseminate information to the public such as the Census Bureau, the Department of Agriculture and Department of Education.[20] Some agencies will even do computer searches for citizens who lack computer skills or provide some user training in how to use their databases.[21] But these systems are not the principal recipients of federal electronic information expenditures or the focus of information policy managers. The government is doing little to inform citizens about these programs or to make them user-friendly. It does not even provide a printed or computerized listing of available government databases.[22] Thus, a computer user may be surprised to learn that some government databases may be directly available from an agency at half the price of accessing these same databases through a commercial network.[23]

The federal government is not going to develop government-wide electronic information systems responsive to broad public information needs on its own initiative. In the same way citizens achieved access to published government information, public constituencies will have to make a political demand for access rights to electronic government information and address the legal barriers and public policy assumptions which today limit their ability to share in the benefits of the emerging electronic government.[24]

III. Legal and Policy Barriers to Public Access to Electronic Public Information.

Today, citizens have broad statutory rights of access to published government information but no clear right to electronic public information. The Freedom of Information Act, the principal statute establishing citizen rights to public information, was enacted in 1966 and significantly amended in 1974.[25] While the legislation was considered when the government was in the process of computerising its internal operations, it was not yet contemplated that the computer revolution would soon give citizens the capability of accessing and using computerized public information. Thus, the provisions of the Act are crafted exclusively in terms of citizen access to published data. While the legislative history of the 1974 amendments deal with government computerization, the drafters did so only to make it clear that the Act required federal agencies to conduct reasonable searches of their computerized databases and produce "printouts" of public records subject to disclosure under the Act.[26]

In 1980 Congress passed the Paperwork Reduction Act which has since guided government computerization.[27] The Act, designed to minimize the federal paperwork burden on citizens and "minimize the cost to the Federal Government of collecting, maintaining, using, and disseminating information"[28] encourages federal agencies to use advanced computer and communications technology to accomplish these missions. In the statement of purposes, the Act makes no mention of using this technology to serve the goal of enhancing public access to information in the computer age. The aim of federal information technology management is to:

> ensure that automatic data processing and telecommunications technologies are acquired and used by the Federal Government in a manner which improves service delivery and program management, increases productivity, reduces waste and fraud, and whenever practicable and appropriate, reduces the information processing burden for the Federal Government...[29]

Under the Paperwork Reduction Act, the authority for developing and implementing "uniform and consistent information management policies" is vested in the Office of Management and Budget's Office of Information and Regulatory Affairs (OIRA).[30] In December 1985, OIRA published its final version of OMB Circular A-130 on "The Management of Federal Information Resources" which sets out current federal information policy assumptions, procedures, and guidelines.[31]

As a statement of federal government management policy on electronic collection and dissemination, Circular A-130 adheres to the mandate of the Paperwork Reduction Act. It contains no policy assumption to support or enhance broad citizen access to electronic information. Circular A-130 recognizes the value of the public's right to know by stating that "knowledge of their government" is essential for citizens and a means for ensuring "the accountability of government." It also states that "the free flow of information from the government to its citizens and vice versa is essential to a democratic society."[32] But the federal information management policy set forth in Circular A-130 assumes that the public's right to know is satisfied if citizens have access to published information.[33]

Circular A-130 defines access to information as the function of providing citizens, "upon their request", with government information which they are entitled to under law.[34] In managing federal information resources, Circular A-130 states that this "right to access government information must be protected..."[35] As already noted, however, the Freedom of Information Act does not establish a clear public right of access to electronic data.

While judicial interpretations of the FOIA have held that computer data may be subject to the Act,[36] the courts have ruled that the government is not obligated to provide citizens with the electronic version of public information.[37] If the information is available in published and electronic format, the government may choose which to provide in fulfilling its FOIA responsibility to respond to citizen requests for public record information.[38]

Circular A-130 incorporates the assumption that citizens are not entitled to electronic public information into its policy on information dissemination. A-130 states that information should be disseminated to citizens "as required by law."[39] The problem again is that there is only one federal statute---Title III of the 1986 Superfund Law---which explicitly requires the federal government to make electronic public information available to the public on-line and through other electronic information technology means.[40]

Circular A-130 has significant public policy implications for public access to electronic information since OMB's information resource management policy objectives include the active encouragement of federal agencies to develop electronic database collection and dissemination systems for their internal purposes and for disseminating information to the public. However, under A-130, the justification for developing electronic information systems is to achieve government efficiency and cost savings rather than to expand the public's right to know. As Circular A-130 states:

> Over time, changes in laws, economic conditions, or information technology can result in changes in public demand, public purpose, or dissemination costs; for example, an agency's shift to electronic filing of reports, perhaps carried out primarily in order to improve internal information management, might generate a public demand for electronic dissemination that could be satisfied at minimal cost to the government and also improve the performance of the agency's information access function.[41]

To achieve cost savings and efficiencies, A-130 requires federal agencies to place "maximum feasible reliance on the private sector for...dissemination of [information] products and services."[42] Before agencies embark on developing electronic information systems, they also are required to examine private sector services to avoid possible duplication.[43]

While the requirement that federal agencies rely on the private sector for the development of information products and services has been criticized by some as detrimental, in and of itself, to public information rights,[44] this is not the principal policy barrier to advancing public information access rights. In many cases, the private sector information industry may develop or offer more economical and useful information products and services than the government could develop on its own. Instead, the fundamental barrier to public access to electronic information is A-130's requirement that

> where the information is already substantially available in printed form, agencies may consider dissemination in electronic form to be a service of special benefit the costs of which should be recovered through user charges.[45]

This, in effect, amounts to a public policy which permits the development of electronic information dissemination systems but structured in ways detrimental to public access. The government is encouraging federal agencies to develop governmental electronic information systems in partnership with the private sector information industry but to minimize the cost to the government by passing much of it on to the end users. Even though this may create price barriers that make electronic data systems unaffordable and inaccessible to most citizens, government policy assumes that access rights are not infringed or affected because "the information is already substantially available in printed form..."

Under Circular A-130, the only circumstances under which a government agency has an obligation to develop electronic data systems which make them readily accessible to the public at large through fee waivers and reduced charges is when an agency has

> a positive obligation to place a government [information] product in the hands of certain specific groups or members of the public and also determines that user charges will constitute a significant barrier to discharging this obligation, the agency may have grounds for reducing or eliminating its user charges for the product or service, or for exempting some recipients from the charge.[48]

However, since there are no general statutory requirements for federal agencies to disseminate electronic information to citizens when a printed version is available, the policy is inoperative.

To underscore the present government's assumption that citizen access rights are met by merely providing published information, one other facet of OMB information policy is worth highlighting. Circular A-130 points to the depository libraries as serving as an information "safety net" for the citizenry. As stated in the Circular:

> The depository libraries provide a kind of information safety net to the public, an existing institutional mechanism that guarantees a minimum level of availability of government information to all members of the public. Providing publications to the depository libraries program complies with the law and costs executive agencies virtually nothing.[47]

In the context of present federal electronic public information, the "safety net" is shredded from the outset. The definition of "publication" in A-130 does not include electronic data tapes, diskettes or other electronically formatted information products. In effect, federal agencies are merely required to supply paper documents to the depository libraries.[48]

IV. Government Secrecy in the Computer Age

In this advanced era of computerized government, the failure to establish or clarify citizen access rights to computerized data is having a negative impact on the public's right to know. As already stated, public policy barriers are in place which may deny many citizens effective access to public information which the government affirmatively makes available through electronic databases. The uncertainty of citizen rights to computerized data is also acting as a legal impediment to citizen access to both published and computerized versions of government information and transactional data which federal agencies do not want to make public or only consider making public when a citizen makes a request for it.

Transactional data involves the specifics of how the government "transacts" government affairs from dispensing welfare to meeting its legal mandate to collect taxes or clean up the environment. It is the information which citizens seek under the Freedom of Information Act. Obtaining access to it is critical for protecting open government and insuring government accountability. However, because the disclosure of this data often subjects the government to public criticism, agencies often attempt to resist citizen efforts to make it public by claiming that it is "exempt" from disclosure under the FOIA.[49]

Today, citizens are finding that the government is using computerization and the uncertain status of citizen rights of access to electronic information under the FOIA as a new means for keeping information secret both in published and computerized form. A "technology of freedom"[50] threatens to become a "technology of secrecy."[51]

Traditional Access Rights and Computer Secrecy

As citizens ply the government for published information about sensitive matters such as the enforcement of health and safety laws or on-going scientific research which may have national security implications, the government is using the fact that transactional information is today stored in databases which require new programming or complex computer queries to extract it as a roadblock to access. Citizens are finding that some sensitive transactional data is no longer readily accessible from agency "records" subject to disclosure under the FOIA.

The potential for a new form of secrecy in the computer age was broached as early as 1974 in a seminal article by Professor Alan Westin. In "The Technology of Secrecy,"[52] Westin observed that in computerizing its operations, the government was not motivated by a concern about the impact of computerization on public access to information. After interviewing agency officials, Westin determined that while computerization was making it no more difficult and sometimes more easy for agencies to meet citizen demands for information under the Freedom of Information Act, these public access results were

> essentially by-products of the primary goals of improving data services to clients and management. Improving the production of information to other parties, such as the press or public interest groups investigating government operations, was not a goal of computerization. Several of the agency replies stated this explicitly.[53]

Westin worried that unless government made public access a goal of computerization by insuring that computers were programmed to extract information valuable to citizens it was possible that citizens would not achieve the benefits of computerized information processing but instead encounter new forms of government secrecy. In attempting to interest policy makers in the issue, Westin gave concrete examples of how appropriate public access programing could enhance the public's right to know as well as examples of how the failure to require such programming could impede access.

To illustrate the positive case for access to computerized information, Professor Westin used an example provided by Ronald Plesser, then working with Ralph Nader, of data that would have been "difficult if not impossible to get from the previous manual file."[54]

> When the Nader Congress project was under way in 1972, the researchers wanted to find out what stocks were owned by each Congressman and candidate for Congress in 1972. But Mr Plesser noted, 'We would have had to go through 10,000 files to get the names.' However, the Nader group learned that the SEC had a name-access program for this ownership file, and asked to have a list compiled of each Congressman and candidate for Congress in 1972....[T]he Nader group persuaded the SEC to supply the list, and it aided the Nader Congress research greatly.[55]

To illustrate the possible negative implications for public access if government computers were not programmed to respond to specific citizen requests for information, Westin again used the Nader group experience:

> [T]he Nader associates [Plesser and Harrison Wellford] cited several examples where files had been computerized, but the absence of a software program to produce the desired information prevented them from obtaining the data they needed....[One] example involved meat-inspection reports and pesticide data. The Center for Responsive Law won the right to inspect these at the Agriculture Department. Some of these data were computerized, but when the Center wanted information on a statewide basis, it was told that it would require costly reprogramming which, Mr. Wellford observed, was 'beyond our ability to pay.'[56]

As Westin emphasized:

> The Nader group experience underscores the fact that more information of the kind sought by public interest groups is potentially available in the computerized files than had been provided in manual records. But where the agency has not provided software programming to extract what these groups want, it is not yet clear under interpretations of the Freedom of Information Act whether a demand can be made that such expensive reprogramming, often interfering with vital computer services, can be required of the government.[57]

If citizens could not demand access to computerized data as a matter of right or did not make it a public policy objective of government to develop computer systems to enhance citizen access to information, Westin feared that advancing computerization of government operations might continue to be "a case of lost opportunities and...potentially great danger..."[58] to the public's right to know.

In 1974, when Congress amended the Freedom of Information Act, citizens did not demand and the final statute did not require the government to program its computers to insure that public information would always be available. Although legislation was proposed by democratic Senator Lee Metcalf to mandate such a requirement, it was not included in the final 1974 amendments to the Act.[59] While the legislative history made it clear that agencies would have to search through computers for "records" subject to disclosure, neither the Act nor the legislative history dealt with the right of citizen access to transactional information which may reside in a pool of computer data rather than the computer equivalent of a manual record file and which would require new software programming or complex computer manipulations to make it available in ways responsive to citizen requests.

Westin's worry that the public's failure to develop citizen access policy for computerized data might pose "great danger in the future" has even greater resonance today.[60] Citizens concerned about health and safety and other public matters are discovering that the computer can become a "black hole" for contested public information. Here are some recent illustrations of this dangerous development.

Recently, Public Citizen filed an FOIA lawsuit against the Occupational Safety and Health Administration (OSHA) to challenge its withholding of public information on grounds that it would require reprogramming to access it.[61] Public Citizen describes several instances in which citizens have sought records from regional offices of the OSHA relating to such matters as inspection data on companies within a certain geographic region only to be informed that the documents no longer existed in published form or if they do, are more readily retrieved from OSHA's central computers operated by OSHA's Office of Management Data Systems (OMBDS).[62]

OMBDS has taken the position that to access the information would require it to "reprogram" its computers. Because federal agencies interpret "reprogramming" to mean the "creation" of a new record and that the creation of new records is not required under FOIA,[63] OMBDS has told these requesters that they must "pay the computer programming costs which often run into hundreds and even thousands of dollars."[64] If the document existed in published form, it would not be a new record and the requester would be entitled to a fee waiver. Public Citizen is litigating the issue of whether or not this reprogramming is a reasonable search within the meaning of FOIA and thus required to be conducted without cost to the requester.

The critical public access issue is posed by OSHA's acknowledgement that "[w]here information is sought by occupational hazard or subject matter investigation...information cannot always be produced with existing agency programs..."[65] The public policy question that must be resolved is whether OSHA, or any other government agency, can "turn its computer system into a black hole for information that would otherwise be accessible under the FOIA."[66]

Recently, officials at the Department of Energy denied the existence of public information on similar grounds. The National Security Archive, a public interest group, learned that the Department of Energy(DOE) maintains a series of reports on microfiche and requires recipients to "agree to limit access...only to those persons and organizations authorized to receive them."[67] The Archive filed a FOIA request for the list on the grounds that this was public information subject to the Freedom of Information Act.[68] DOE responded that "there is no list that covers the items."[69]

As the National Security Archive pressed its case, it turned out that the "limited access list" could be produced but not without reprogramming DOE computers to retrieve it. On appeal, the Department of Energy's Office of Hearings and Appeals held in favor of the National Security Archive and ordered the list produced on the grounds that the reprogramming was a reasonable search under FOIA.[70] Nevertheless, the troubling issue is the initial "no record" response to the Archive's request. Unless computer programming issues are resolved by the

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courts or by law, this can become a common agency response to requests for information under the FOIA in the computer era and signals the emergance of a new form of government secrecy.[71]

Government Secrecy and Electronic Data

While citizens have always understood the power of the government to use computers as a tool of analysis and query, only recently have some outside the business and scientific community come to realize that the ability to analyze electronic public data is within their own capabilities. Owning inexpensive yet powerful personal computers and complex search software programs, these new computer age investigators and government "watchdogs" are requesting access to electronic public data from the government to monitor and investigate government decision-making. For example, Professor Susan Long, Director of the Center for Tax Studies at the University of Syracuse and David Burnham, an investigative reporter, are seeking to establish an institution to gather important government transactional electronic data to study government operations and to make both their analyses and the data available to other reporters, researchers, and citizens interested in doing computer studies of government decision-making.[72]

Without an established legal right of access to computerized public information, these efforts to obtain computerized transactional information to do complex and unprecedanted studies of government may be compromised. Federal officials, resistant to the idea of citizens using computers to probe the inner workings of government, have fought diligently to block citizen access to computerized information.[73]

Professor Long has had to litigate several cases with the government to win access under the FOIA to computerized "transactional information" from the IRS. In 1979 she won an important case which gave her access to the IRS computer program which determines who will be audited.[74] Using the computer tapes for analytical purposes, Professor Long has conducted studies which demonstrate, for example, that the mathematical formula which the IRS uses to select returns most needing audit does a poor job. In another study, she used computer analysis to show that citizens in one part of the country are more likely to be audited than in another.[75]

In a recent case, however, where Professor Long sought computer data of IRS return information stripped of personal identifiers to protect privacy, the government won a Ninth Circuit Court decision denying her access to the computer data. The case was decided in part on the Court's acceptance of the government's contention that the request for the data without personal identifiers to protect citizen privacy was a reformulation of the information and was thus the "creation" of a new agency record which is not required to be disclosed under the FOIA.[76] Assuming that privacy rights could be protected, the only logical reason (in addition to the usual refrain of government that it would be costly and time-consuming) why the government fought the case is its fear of what citizens might be able to learn about government from using and manipulating computerized data.

The federal government's recognition of the power of computers to delve into the public business and its fear of public access to sensitive computerized information is best exemplified by its recent effort to restrict public access to "unclassified but sensitive" computer data to protect national security and other federal interests. Some proposals to restrict access to this data were based on the assumption that the public has no right to the electronic version of government data.

In September 1984 President Reagan issued a secret National Security Decision Directive 145 (NSDD 145) giving the Department of Defense government-wide responsibility over protecting telecommunications and computer security.[77] In 1985 a DOD official testified that the genesis of NSDD 145 was the recognition that

> [v]irtually every aspect of Government and private information is readily available to our adversaries---unfriendly governments and international terrorist organizations are finding easy pickings in the flood of unprotected telecommunications and automated data processing information afloat in this country."[78]

That same official, in a interview with the Washington Post, stated that the government was concerned about more than what our "adversaries" might be doing with computer data.

> I'm very concerned about what people are doing--and not just the Soviets. If that means putting a monitor on Nexis-type systems, then I'm for it. The question is how do you do it technically without unnecessary interference.[79]

Pursuant to NSDD 145, the government issued a National

Telecommunications and Information Systems Security Policy which defined "unclassified sensitive information" broadly to include:

> information the disclosure, loss, misuse of which could adversely affect national security or other Federal Governmental interests. National security interests are those unclassified matters that relate to the national defense or the foreign relations of the U.S. Government. Other government interests are those related, but not limited to the wide range of government or government-derived economic, human, financial, industrial, agricultural, technological, and law enforcement information, as well as the privacy or confidentiality of personal or commercial proprietary information provided to the U.S. Government by its citizens.[80]

At the same time, DOD officials announced that to limit foreigners and citizens from using computers to delve into this information in ways which might adversely affect federal interests, they were not only considering monitoring who uses government and commercial computer systems but

> limiting the availability of on-line data in government databases; placing selective limits on who may access government databases; refusing to release or sell... [some]...data in electronic form; licensing government database information subject to restrictions on access or further dissemination; contracting with private database companies to provide database services subject to restrictions on access or further dissemination;...[and]...reclassifying data already disseminated to private data vendors...[81]

Congress and a broad public interest and information industry coalition roundly condemned NSDD 145 and DOD's plans as a threat to the free flow of information. As a consequence, the policy directive defining unclassified sensitive information was rescinded[82] and legislation was passed to restrict DOD's authority to set computer security policy for unclassified data systems.[83] The government has also retreated from implementing

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the proposals to limit access to computer data.

Nevertheless, the government at some future time might again claim it has authority to impose such access restrictions. For example, it might try to take sensitive technical database tapes off the shelf of the National Technical Information Center or use licensing schemes to restrict the usage of public computerized data---exercising what amounts to _defacto_ copyright controls over public information.[84] It could base these actions on the case law which suggests that electronic data is exempt from the FOIA or that the public is not entitled to data in electronic form if a hard copy is available.

In fact, the Department of Commerce today attempts to limit through contractual arrangements the sale of database services to companies likely to transfer the information to any foreign third party[85] and the National Library of Medicine offers public information databases to the public under licensing restrictions similar to those used for copyrighted materials.[86]

With the government acting as if it owned public electronic data and with citizens having no established legal right to that data, the ability of citizens to obtain and use electronic information for analytical purposes which the government thinks might harm some federal interest or prove embarrassing to an agency cannot be taken for granted today.

V. Democratizing Access to Electronic Public Information: The Environmental Protection Agency's Toxic Release Database

The ultimate case for establishing a legal right of access to electronic is to enhance the public's right to know. But since most citizens have not used on-line government databases,[87] they need concrete examples of why acquiring rights of access to electronic public information is a matter of what Tocqueville termed "self interest rightly understood." Now, for the first time a vivid demonstration is within reach. As a matter of law, the Environmental Protection Agency must soon make significant transactional information on toxic chemical emissions into the environment available to all citizens by electronic means.

This essay deals with the EPA database in considerable detail. The statute's provisions, the process EPA is following to deal with information providers and potential users of the database, and the way in which significant policy issues are being identified and resolved are important precedents for developing federal information policy in the era of electronic government. These developments are also potential guideposts for future efforts to establish rights of access to electronic public information.

The TRI Database: The First Public Access Database

In 1986 Congress passed the Superfund Amendments and Reauthorization Act (SARA).[88] With toxic disasters like Bhopal and Love Canal in mind, Congress was determined to strengthen the power of states, localities, and citizen organizations to make the government and industry clean up toxic waste dumps and prevent future disasters. As part of SARA, Congress passed Title III, the "Emergency Planning and Community Right to Know Act of 1986."[89] Title III establishes statewide and local community emergency planning agencies and includes a number of important industrial information reporting and disclosure requirements to provide both government and citizens with information about toxic chemicals in the environment. Over 30,000 industries are required to file reports on their storage and use of over 300 toxic substances. They must state how much and in what manner these toxic substances are emitted into the environment on an annual basis.[90]

In a groundbreaking precedent for the public's right to know, the Act includes the first federal statute which requires a federal agency to collect significant public data and then disseminate it to citizens by electronic means. Pursuant to Section 11023 (j), the Environmental Protection Agency (EPA) Administrator is required to

> establish and maintain in a computer database a national toxic chemical inventory based on data submitted to the Administrator under this section. The Administrator shall make these data accessible by computer telecommunications and other means to any person on a cost reimbursable basis.[91]

While other federal databases are "accessible" to the public on a "cost reimbursable basis," the SARA Conference Report makes it clear that Congress intends EPA to develop the national toxic chemical database (now referred to as the Toxic Release Inventory or TRI Database) principally to accomplish Title III's "community right to know" objectives rather than goals of economy and efficiency. In this regard, the SARA Conference Report states that while the Administrator may charge "user fees" for accessing the database, they must not be "prohibitive." More important, like the Freedom of Information Act, the Congress encourages EPA to establish a "reduced or fee waiver" policy for certain requests which are "in the public interest."[92] To protect traditional access rights, the Conference Report states that "other means" includes "responding to reasonable requests for printouts of data for those who do not use or choose not to use computers."[93]

The Right to Know and Citizen Empowerment

An EPA official has described how the Toxic Release Inventory (TRI) Database may revolutionize the public's right to know by increasing the ability of citizens to monitor the environment and make government and industry more accountable as Congress intends. In an interview in Chemical Times and Trends, aptly titled "The Revolution Ahead: Public Information on Toxic Emissions,"[94] Charles Elkins, EPA's Director of the Office of Toxic Substances and the official in charge of implementing the TRI database, describes TRI in these terms:

> The program is quite revolutionary when you think about it. We have never had...(this)...kind of information, even here at EPA. As it is said, 'information is power.', and these data will give citizens more power over toxics in their environment...[95]
>
> Specifically, we are looking for the ability for people to sit at their computer terminals, dial up this data base from anywhere in the country, and be able to not only look at each individual emission report, but actually analyze the data. So they could ask questions like:' How many tons of carcinogens are released in the air in my community?' Or how does company X compare to the companies in its standard industrial code.[96]

As Elkins observes, the TRI Database has the potential for altering the traditional power relationships between government

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and citizens. In the past, citizens have had to rely on EPA for analyses of environmental problems and issues. Title III "really turns this process upside down."[97] Under Section 11023(j)

> EPA collects the data, puts it up on the computer and people analyze it any way they want to. There will be no EPA press release or 'editorial' from EPA. That's the way the statute was written, and our assistance to the community in understanding the data will have to be supplementary to this primary task."[98]

Elkins gives a vivid example of how citizens will be able to act independently of EPA by using the TRI database. Without EPA issuing a report or without making a request for data and waiting for it to be processed under The Freedom of Information Act,[99] a newspaper reporter could access the computer, make queries about a company in a particular location, sort the data in a number of ways, and create unique reports for a story. Under the headline "Local Plant Dumps Toxic Chemicals in Crystal River," the following hypothetical story could appear:

> The ABC Manufacturing Co. in downtown River City dumped more than 200 tons of toxic chemicals, including several cancer-causing substances, into the Crystal River last year according to reports made public yesterday by the U.S. Environmental Protection Agency. The river is the major source of drinking water for River City and most of surrounding Utopia County. The reports also show that ABC, a leading producer of chrome-plated industrial widgets, released nearly 50 tons of toxics into the River City's air in 1987, and sent another 300 tons of potentially poisonous material to the Utopia waste-treatment plant for disposal. Last year, the plant reported to EPA that it stores more than 1,000 tons of hazardous substances within a few blocks of River City High School. On three different occasions over the past six months, plant accidents have released clouds of hazardous and toxic chemicals into the surrounding neighborhoods.[100]

A citizen activist could do the same kind of computer

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analysis and develop a report on "Crystal River" and release it at a press conference. A public interest group could then use it for purposes of grassroots organizing, protest, or litigation. On the other hand, chemical companies and other industrial firms may produce computer reports to prove that they are obeying the law by emitting safe quantities of toxic chemicals into the environment.[101]

If the TRI Database works as described by EPA, it has enormous precedential value for charting the future course of the public's right-to-know in the electronic age. If it empowers citizens concerned about toxic waste, a public demand may develop to replicate the TRI Database for the purpose of disseminating other important environmental data.

The public might also demand similar databases at other agencies. Instead of pursuing "hard copy" versions of OSHA documents, as Public Citizen is doing under the FOIA today, citizens might work to pass a database statute modeled after TRI to cover computer and hard copy requests for data at OSHA. Soon, civil rights organizations would want to gain electronic access to "transactional data" at the Justice Department and Department of Education to study whether and how civil rights laws are being enforced. Civil liberties groups would want to access computer data from the Justice Department to study how prosecutors are using the federal preventive detention statute in different parts of the country. Conservative groups might want computerized access to federal housing and employment training grants "to demonstrate" that they benefit "liberal elites" rather than the poor or that these programs are not cost effective compared to market solutions.

Public Access Policy Issues Posed by the TRI Database

Before any of these demands for electronic public information can be met, significant policy issues need to be resolved. As EPA's effort to develop the TRI database demonstrates, making a demand for access to electronic public information is only the first step towards making computer data readily and easily accessible to citizens.

Over the last year and a half, EPA's Office of Toxic Substances has been working to resolve a number of significant information technology policy and technical issues posed by the TRI Database. Without precedent in federal law or practice, EPA is attempting to determine how to satisfy the congressional mandate which requires that the TRI database "shall...[be] accessible by computer telecommunications ...to any person on a cost reimbursable basis." EPA has to resolve how to develop the system within funding restraints so that it is both cost effective and accessible to citizens at rates which are not "prohibitive." EPA also has had to determine whether the government or the private sector information industry should develop the TRI database to meet goals of economy, efficiency, and public access.

EPA's Policy Consultation Process With Potential Users

From the outset, EPA's Office of Toxic Substances has actively sought to involve interested parties in its deliberations. It has conducted a user requirements survey,[102] issued a public report on its plans and recommendations,[103] and held a public hearing to solicit comments on its development options.[104] EPA regularly consults with environmental organizations, the Chemical Manufacturers Association, and other potential users of the TRI database to resolve conflicts and refine its system design. As a House Government Operations Committee Report on electronic dissemination systems points out, a process of this kind is essential to maximize the possibility that an electronic information system will serve both the needs of government and potential users.[105]

The involvement of the user community is also important to note. If citizens want electronic data systems to serve their needs, they must actively take part in the agency planning process.[106] Since the enactment of Title III, a coalition of environmental groups has been meeting regularly with EPA to express their views about EPA's plans.[107] Taking a lesson from the private sector information industry, the environmentalists have brought in their own technical assistance group, the Public Interest Computer Association, to better understand EPA's system specifications and to work with them and EPA to insure that the final system will better serve user needs.[108] Their involvement has been welcomed by EPA and is likely to improve the final system design.

The EPA Process for Determining How to Develop the Database

On March 4, 1988, EPA issued a "Public Report for Options to Make the Toxic Release Inventory(TRI) Database Accessible to the Public."[109] The Public Report sets out EPA's interpretation of the system requirements necessary to meet Title III's mandate that the TRI database must be "accessible...to any person." It outlines the process EPA followed to explore both government and private sector options for developing the TRI database. It sets out the factors EPA weighed in deciding which option to choose and what level of service to provide. Familiarity with the EPA Public Report is fundamental both to understand how the EPA plans to implement the TRI database and to consider whether EPA's decision-making process and recommendations embody sound public policy for the electronic dissemination of public information.

The Public Report states that EPA explored the feasibility of meeting system or user requirements at three levels of service. As EPA outlines in the Report:

> System requirements were considered in three tiers, i.e. Tiers A, B, and C, where Tier A requirements represent the minimum requirements mandated by legislation and/or specified by EPA, and Tier B and C requirements represent optional enhanced characteristics which are desirable for the TRI public data base to enhance data utility and analysis and display characteristics.[110]

In common parlance, these levels of service may be described as basic, enhanced, and user-friendly. At Tier A, the system would be "accessible," have "aggregation capabilities", and include "search and retrieval" software and minimum "user support." At Tier B users would have in addition "statistical analysis software" and access to "complementary files" for doing more complex analyses. At Tier C, the system would have "menu driven screens," "mapping capabilities," and "crosslinks to EPA data bases."[111]

After establishing the system requirements, EPA attempted to determine the most efficient and cost-effective way to develop the TRI Database. As required by federal law, it considered using other current government information system deigns (for example, the EDGAR system) After determining that existent systems were either too expensive or inappropriate for the TRI Database, the EPA went on to explore four options.[112]

The EPA considered contracting with the private sector by placing a notice of system requirements in Commerce Business Daily and entered into discussions with two commercial information providers. Second, EPA explored developing the system through Purdue University, a non-profit institution. Third, EPA considered the feasibility of establishing its own electronic Clearinghouse. Finally, it examined the possibility of setting up the system through an interagency agreement with the National Library of Medicine.[113]

After obtaining tentative bids from these entities, EPA weighed which option to choose in terms of four factors. EPA considered: (1) cost to the government, (2) cost to the user, (3) the risk of delays or problems in contracting and implementation, and (4) conformance to system requirements.[114]

After examining the options and what they would cost to meet system requirements at the three levels of service, the Public

Report states that EPA's recommendation is to establish an intergovernmental agency relationship with the National Library of Medicine(NLM). Initially, NLM will provide service essentially at the Tier A or basic level. At the same time, the EPA will make the database tape available through the Commerce Department's National Technical Information Service (NTIS) to "encourage" the private sector to develop alternative TRI database systems.[115]

The Public Report summarizes EPA's reasons for making this recommendation as follows:

> Tier A has been selected because of funding restraints. The EPA planned approach has been to select the...[interagency agreement with the National Library of Medicine]...which has been determined to be the option which most closely provides the best balance of all evaluation criteria established for this analysis. The ...[National Library of Medicine]... option has the potential of providing an 'enhanced system' at the partial Tier B level for the initial implementation, while being funded at the Tier A level.[116]

EPA's Commitment to an Enhanced User-friendly System

EPA's recommendation to develop the TRI database through the National Library of Medicine (NLM) establishes EPA's fundamental commitment to develop the TRI database as a user-friendly system accessible by most citizens. EPA chose NLM because, compared to other system options, NLM permits EPA to provide "enhanced" service to users at the outset despite EPA's funding constraints. Unlike the EPA Clearinghouse or private vendor options, NLM will provide users of the initial system with access to "complementary files" of "health and environmental effects data" and more user training and support. Moreover, in EPA's judgment, the NLM system is the most cost-effective option for achieving a fully user-friendly system with "menu driven screens" and "mapping capabilities" in the shortest period of time.[117]

Given the complexity of this new technology and citizens' lack of familiarity with it, EPA's commitment to develop an enhanced or user-friendly database is of critical importance. While the computer expert can use sophisticated search software to conduct database queries, most citizens need "value added" enhancements such as "menu driven screens" and prompts to help them navigate through electronic data.

Resolving System Requirements Issues

While the Public Report indicates EPA's intent to develop a user-friendly system, it does not provide sufficient detail to permit the public to make an informed judgement on whether the system will be easily accessible by the public when it is operational. Although EPA is proceeding with an interagency agreement with the National Library of Medicine to implement the TRI Database, neither the Public Report nor EPA's preliminary EPA/NLM interagency agreement[118] contain sufficient information or system design specificity for the public to determine whether EPA's recommendations are cost-justified or reasonable. Because system requirements have not been worked out, neither the public nor EPA is in a position to judge whether the NLM system will meet either public needs or EPA's expectations.

For the general public, the fundamental issue is whether the TRI database, when it is up and running, will function in the manner described by EPA. Will an environmentalist, local government official, or newspaper reporter be able to "dial up" the National Library of Medicine and query the database in the way described by the Director of the Office of Toxic Substances? Will they be able to ask and get answers to questions such as "How many tons of carcinogens are released in the air in my community? Or How does company X compare to the companies in its standard industrial code?"[119] The Public Report, instead of answering such public concerns, is written in generalities. NLM will provide the "best benefit for user requirements" but there is no specificity about what NLM will provide.

The generality of EPA's Public Report does not permit the public to determine the soundness of EPA's recommendations on such a fundamental issue as whether or not EPA can implement a user-friendly system within current budgetary constraints. As already mentioned, the Public Report states that because of "funding restraints," EPA will implement the National Library of Medicine TRI database system essentially at the Tier A level of service.[120] But Tier A is by no means user-friendly.

In fact, it may be virtually useless for most citizens. At the Tier A level of service, citizens may "access" the data on 30,000 firms reporting on over 300 toxics but only with search and retrieval software based on "Boolean logic (ie. AND, OR, NOT),"[121] and without menu driven screens, cross links to other data files, and much of any user support (i.e. EPA plans a telephone hotline to answer user questions from around the country).[122]As EPA concedes in its draft interagency agreement:

> It is recognized by both the EPA and the NLM that two levels of users (novice and sophisticated) will want to access the TRI database. While the current user training services and search guides offer excellent assistance to searchers comfortable with searching online systems, additional training which addresses the novice or new searcher will need to be developed.[123]

Yet EPA's justification for limiting the system in this way because of budgetary constraints is not clearly supported by its cost estimates. According to the Public Report's summary of costs, the National Library of Medicine option at Tier A is estimated to cost $437,686 for the first year. At Tier C the cost would be $742,686, a difference of only $305,000. Averaged over a five year period, the cost difference between Tier A and a user-friendly system is estimated to be only $88,000 per year.[124] In fact, developing a user-friendly system from the outset may even prove less costly because it will increase use of the system by making it more accessible to the public.[125]

Given the fact that Congress has appropriated $10 million to implement Title III,[126] and that only a fraction of this total may be necessary to make the computer system accessible by most citizens, EPA's justification for funding only Tier A service appears unreasonable, particularly in view of its commitment to a user-friendly system, the intent of Congress in establishing the database, and EPA's own concerns about providing toxic chemical data without giving citizens the capability of analyzing it.

In enacting the "Community Right to Know Act" which includes the requirement to establish the TRI Database, Congress wanted local governments, planning groups, and community leaders and environmentalists to know about toxic dangers in their communities without having to rely on EPA reports.[127] The database, as the head of the Office of Toxic Substances stated, is intended to make citizens less dependent on EPA's published reports and analyses.[128] Unless citizens can use the database, they will continue to be dependent on EPA for data.

EPA has also indicated that "value-added" enhancements to the TRI Database are necessary to resolve its own concerns. EPA officials worry that citizens may misinterpret the data by translating information about toxic "emissions" into the atmosphere directly into an indication of "exposure" levels. In fact large quantities of toxic chemicals, if handled appropriately, may not threaten the environment. To help citizens understand the data, the head of the Office of Toxic Substances has written about the need to add analytic software to the database (e.g. GEMS, an analytic modeling tool for projecting exposure levels).[129]

Even if the Public Report stated an intention to provide "menu driven screens" or "substantial user support and training," the public would not be able to judge whether the system will be user-friendly. As EPA has not specified what kinds of menu screens it has ruled out at this initial phase, the public would be in no better position to know how it would benefit if EPA spent the additional funds to add such an enhancement unless EPA specifies what the menus would do. A "menu-driven screen" can range from "WELCOME TO THE TRI DATABASE PLEASE READ THE DBASE

THREE MANUAL AND PROCEED" to a series of query screens which assist a user to make a sophisticated search. Similarly, while the draft interagency agreement contemplates NLM providing user training, the agreement does not specify whether NLM will conduct seminars or prepare manuals or both.

The failure to establish detailed system requirements not only places the public at a disadvantage in understanding how the TRI Database will function. EPA has also failed to give NLM sufficient information for it to know what software to purchase or what programming needs to be done. If the TRI Database does not work as EPA contemplates, EPA's failure to specify system requirements may make it impossible to hold NLM accountable.

EPA is exploring whether further enhancements are feasible and attempting to clarify system requirements. This includes specifications covering such matters as how TRI data will be maintained, how user accounts will be administered, software design, query or menu screens, help screens, gateways to other databases, and training and technical support functions.[130] Policy matters such as "fee waiver" standards will also need to be addressed.[131] EPA is consulting with potential users to work through the issues. Environmental groups, assisted by their technical assistance team, are working both with EPA and NLM to refine the draft interagency agreement.

Public Access and Information Policy

The Environmental Protection Agency's potential development of a government funded user-friendly TRI Database has important implications for evolving public policy on government electronic information systems. While choosing the National Library of Medicine, a government agency, to establish an "enhanced" electronic database, EPA has demonstrated that public access rights can be achieved without sacrificing other important public policy objectives. In particular it is possible to build a public access system while giving the private information industry an opportunity to develop the system and insuring that the government does not gain monopoly control over electronic data.

At the same time, EPA's reason for choosing NLM rather than EPA itself or a private sector firm to develop the TRI Database suggests that the current debate over whether the government or the private sector should provide "value-added" systems needs to be reformulated. The principal issue is not whether one sector or the other should develop "value-added" systems but which can do so most effectively in particular circumstances consistent with the goal of maintaining a diversity of information sources.

Public Access Systems and the Private Sector

Under OMB Circular A-130, government agencies are required to place "maximum feasible reliance" on the private sector in developing government electronic dissemination systems to avoid duplication and to insure that systems are developed in the most cost-effective manner. It is important to keep the government from developing databases which the private sector may establish more efficiently and effectively.[132]

Another goal of federal information management policy is to insure a diversity of information sources.[133] The growth of the private sector information industry is important for the economy[134] and a diversity of information sources is essential to insure the free flow of information. Unfair government competition may stifle the private sector and create government monopolies over information. Some contend that this policy objective can be accomplished in most circumstances by limiting the government to developing "basic" electronic databases and leaving all "value-added" services to the private sector.[135]

Fully consistent with Circular A-130, EPA gave the private sector information industry an opportunity to state their interest in developing the TRI Database by placing a notice of the system and EPA's requirements in Commerce Business Daily.[136] While two commercial firms came forward, neither was particularly enthusiastic about the TRI database.

As the Public Report suggests, their cost estimates were very tentative and higher than those projected by the National Library of Medicine and Purdue University. In fact, there is good reason to believe that the commercial firms did not believe there was sufficient government funding or potential market demand to get involved.[137]

However, the position that a diversity of information sources can only be assured if the government is limited to providing "basic" service needs to be reexamined in light of the TRI Database. Assuming that users of the TRI database or similar government systems need a "value added" or user-friendly system, how can this be accomplished except by government initiative if the private sector does not want to compete or sees no commercial advantage in a particular database?

Since the absence of a commercial market may apply to many potential public databases relating to matters of health, safety, and welfare, the government should be able to develop these databases with "value-added" services without having to wait for a market to develop. Nor should the government have to establish that there is no likelihood that the private sector may be interested before proceeding to establish important electronic databases of government information.

Following the EPA example, the government should only have to give the private sector information providers an opportunity to develop the system and then resolve the diversity of sources issue by making the basic database available for private development. As already mentioned, EPA will provide the datatape to NTIS for sale to the private sector at cost in order to "encourage" the private sector to develop other versions of the TRI Database.

The public interest is best served by this arrangement. If EPA produces a database that does not work well, there is the potential for private development of the TRI Database. In fact, other sources of TRI data should be encouraged. When sensitive data is involved, such as toxic chemical information, the government may attempt to clamp down on public access to the information. For example, the government could claim more information should be unavailable because of the need to protect trade secret information. If this occurs, the more who have a stake in the information, the better the chances are for protecting the public's rights. As discussed earlier, when the government tried to limit public access to "unclassified but sensitive" computer data, a powerful coalition of public interest groups and private sector information providers united to block the government's effort.[138] The best defense against government monopolization of information is through strong broad-based coalitions motivated by a number of "self interests rightly understood."

The Government Role As Electronic Publisher

While the government should be able to develop "value-added" systems, the EPA experience challenges the assumption that the government should become the principal provider of electronic public information.

Although EPA chose another government agency to develop the TRI Database, EPA did so after rejecting the option of establishing its own electronic clearinghouse for toxic data because it would have been the most costly and least useful system to develop. This suggests that in some cases, relying on the government to develop a system may not resolve public access needs. As in the case of relying on the private sector for "value-added" services, looking to the government to do so depends on the particular circumstances. There is no hard rule that resolves how to best disseminate particular electronic information to the public.

According to EPA's Public Report, creating an EPA electronic clearinghouse would have been the option which would have cost both government and users the most. It also posed the greatest potential for delay and ultimately would prove to be the least user-friendly. A principal reason is that EPA has no experience or support structure for disseminating electronic information to the public since electronic dissemination has never been a goal of federal policy. As EPA states in the Public Report:

> The EPA Clearinghouse is at a major disadvantage in regard to user support services, because support infrastructures for public data base access do not currently exist within the Agency and will have to be established for this option.[139]

Never having provided citizen access to its data systems, EPA would have had to contract with commercial firms for hardware, software, and to establish a user support structure. The problem is that this option would cost the most and possibly delay the implementation of the TRI database.

> Contract vehicles exist for most of the hardware/software proposed for the EPA Clearinghouse. However, acquisition of equipment, preparation of the facility, and development of a support group will be time consuming and has the potential to delay...[implementation].[140]

If EPA built the initial Tier A basic system, as a consequence of its internal systems design, the agency would not be able to provide easy access to complementary files. For example, "gateways" would have to be established so that users could access TOXLINE and CHEMLINE at the National Library of Medicine and users would not be able to use them simultaneously with the TRI database. Because other relevant EPA files such as the "National Pollutant Discharge Elimination System (NPDES)" and files on "permits, air releases, etc."[141] are not networked within EPA, extensive costs would have to be incurred to enhance the system.

> It also will require costly and extensive software development to provide access to complementary health and environmental effects files and to crosslink to other EPA files.[142]

With the clearinghouse ruled out and the commercial bids too high, EPA chose the National Library of Medicine option because NLM "has had several years of experience providing user support, training, and marketing for a user community of primary health care professionals"[143] and because it would cost less for users and provide them with ready access to complementary files.[144]

VI. Summary and Policy Recommendations

Over the last two decades, the federal government has transformed public information from paper documents and data files into electronic database systems. Government information is now being disseminated to the public through government and commercial electronic dissemination systems. Yet there has been no serious public policy debate or concerted effort to resolve electronic information policy issues with citizen access rights as a core concern.

It is of vital importance to initiate this policy debate today. As citizens ply the government for information, they are encountering new access roadblocks resulting from the failure to design and program government computer systems to access information which must be disclosed under the Freedom of Information Act. As citizens come to recognize the value of achieving access to electronic information, they find that they have no clear legal right to the electronic version of public data. At the same time, many citizens can neither afford nor have the skills to use most electronic public information being disseminated by the government today.

The debate is timely. Public demand for access to electronic government information is likely to increase significantly in the next several years as the "PC Revolution" enters a new stage. Already, a growing number of citizens and organizations are starting to use the computer to communicate, analyze, and disseminate information. Organizations are establishing electronic bulletin boards and electronic information dissemination systems.[145] Non-profit communications networks are introducing organizations to on-line communications.[146] New electronic systems such as *Reference Point* will soon make it easy for groups which have only begun to use computers to communicate and disseminate information to the public through electronic means.[147] Public access to databases will soon be facilitated when the telephone system becomes a "gateway" for electronic information services.[148] As these developments expand the capability to use databases, more citizens will want to access electronic public information.

Initiating the Debate

The first order of business is to initiate a public inquiry and debate on access to electronic information.[149] The Congress needs to explore the impact on the public's right to know of the federal government's own creation and use of electronic public information for internal governmental processes, as well as the public access implications of government electronic collection and dissemination of information. The Subcommittee on Information of the House Government Operations Committee has held initial hearings on the issue and plans further hearings in the next Congress.[150] The Senate Judiciary Subcommittee on Technology and Law is another appropriate forum. Both Subcommittees have jurisdiction over the Freedom of Information Act. The hearings should identify legal, policy, and technical-practical barriers to citizen access to electronic public information.

Policy Recommendations

The policy debate should focus on both near and long-term policies and strategies for establishing public rights of access to electronic public information. A series of legislative initiatives need to be considered by both the Congress and Executive Branch.

A Right of Access to Electronic Information

Congress should establish a right of access to electronic information under the Freedom of Information Act. In doing so, Congress will have to resolve a number of complex issues beyond the scope of this essay. The Congress must grapple with the definition of an agency record, reasonable search requirements, fee waiver policy, and the distinction between providing information and performing analysis of information. It must also insure that access rights are consistent with other FOIA goals such as protecting citizen privacy. As Congress works on these issues, some initial policy initiatives may be taken.

> First, Congress could require by law that if funds are authorized or appropriated for any new internal government database system which contains public information, the system must be programmed to insure that the information is accessible pursuant to the FOIA. All agencies who plan to upgrade an existing database containing public information with appropriated monies shall be required to expend funds to reprogram the database to make public information accessible. For systems developed or upgraded pursuant to this requirement, the government shall thereafter be required to reprogram the system at government expense to satisfy a request for information subject to the FOIA.
>
> Second, Congress can establish a requirement that information which must be published or made available for copying under the FOIA without awaiting a request, such as agency missions, regulations, and decisions should be "accessible to any person by computer telecommunications on a cost-reimbursable basis" similar to the requirement for the EPA Toxic Release Inventory Database.[151]
>
> Third, Congress can amend the FOIA to provide that requesters under the FOIA may access either the printed on electronic version of information which must be disclosed under the Act.

Public Dissemination of Electronic Information

As the federal government develops electronic collection and dissemination systems, it must consider more than goals of economy and efficiency. Electronic dissemination systems must also serve to insure and enhance public access to information.

As discussed earlier, public access requirements may vary depending on the nature of the particular information system.

For example, providing public terminals may be sufficient for the EDGAR system dealing with security filings but wholly inadequate for EPA's Toxic Release Inventory Database. One possible solution is legislation to amend the Paperwork Reduction Act or enactment of specific legislation that would change information management resource policy in the following ways:

> First, require that federal agencies consider "adequate provision for public access" as one of the factors that must be weighed in developing information system plans in addition to factors such as avoiding duplication or looking to the private sector to develop information services and products.
>
> Second, require federal agencies to actively involve potential commercial and non-profit institutions in commenting on agency information system plans both through notice in the Federal Register but also by actively seeking their participation in agency planning deliberations as EPA has done with respect to the TRI Database.
>
> Third, establish system requirements that mandate contractors to submit plans for providing access to non-commercial users such as educational institutions, depository libraries, and other non-profits at reduced rates.

Public access requirements for specific database systems would be established through the give-and-take between federal officials, information providers, potential users, and the Congress.

In addition, enhancing citizen access to electronic public information can be accomplished by also considering other initiatives.

> First, the federal government should be required to establish an electronic and hardcopy index of all public databases which describe their contents, how they may be accessed, what they cost, and what user supports are available. It should be updated annually. The electronic index should be available through the Government Printing Office, the Depository Library

Program, and NTIS.

> Second, the government should be encouraged to establish government-wide open network architecture requirements and standard formats to make databases more easily accessible to citizens.
>
> Third, efforts should be made to develop "electronic pilot projects" through the Depository Library Program. The Joint Committee on Printing, the library associations, and the information industry need to explore "new partnerships."[152]

Finally, legislation can be crafted to achieve public access goals by establishing electronic databases to disseminate data on matters of health, safety, welfare, education, and other matters of public importance based on the EPA TRI Database model.

VII. Conclusion

These policy objectives will not be easily achieved and some will need to be recast and reformulated after public debate. But if this paper stimulates debate and interest in this important issue, it will have achieved its purpose. In any event, processes are underway which will eventually make citizens users of electronic public information.

At the end of this scenario, one can envision an "Electronic Freedom of Information Act." Citizens dial up the federal FOIA database which has an index of agencies and subjects. The citizen chooses an agency and the computer provides a "gateway" to the agency's FOIA database. Using a user-friendly menu and screen prompts, a citizen should be able to access files already mandated to be made public pursuant to the FOIA. A citizen may also make an electronic request for other public information and "files" electronically maintained by an agency. Within a statutorily specified time, the agency responds to the request by electronic mail to inform the requester that the request is granted and asks whether the requester wants the information delivered electronically or in hardcopy form by regular mail or fax. The citizen responds via an electronic bulletin board that he or she wants the information electronically and enters a credit card number to have an account charged for the FOIA search and reproduction fees. The information is transmitted to the requester's computer.

The citizen may also use the Electronic FOIA at public libraries and through commercial and non-profit organizations who have used the electronic FOIA to make special collections of information on national security issues, childrens' rights, or on FCC or FDA regulatory matters or have incorporated "value added" enhancements which permit basic information to be analyzed and compared in more complex ways.

This electronic information revolution may be in the future but it is not farfetched as the TRI Database exemplifies. Moreover, policy makers are already considering this revolutionary transformation. As the Chairman of the House Government Operations Subcommittee on Information recently stated:

> [T]he new technology is putting considerable pressure on the laws that were passed to regulate Government information policy when information only existed on paper or other hard copy formats. There may soon be a need to recognize the consequences of the new technology. For example, there may be a need to pass an Electronic Freedom of Information Act in order to make certain that the benefits of broad disclosure of

Government information are not lost as Government information becomes electronic.[153]

NOTES

1. U.S. Congress, Office of Technology Assessment, *Federal Government Information Technology: Management, Security, and Congressional Oversight*. (Washington, D.C. GPO: 1986), 28.

2. Ibid. ,142-43.

3. Information USA, *The Federal Database Finder: A Directory of Free and Fee-Based Databases & Files Available from the Federal Government*, 2nd. ed. (Maryland: Information USA, Inc., 1987), 1.

4. Ibid. chap. 1 passim; OTA, *Federal Government Information Technology*., 143-146.

5. Information USA, *The Federal Database Finder*, 1-3. In Fiscal year 1985, there were 1,022 agreements by federal agencies for use of 16 major commercial online retrieval systems. The most used services were Dialog, BRS, Lexis/Nexis, Orbit, and Westlaw. Alan F. Westin, *Reference Point Prospectus* (Unpublished September 1987).

6. Information USA, *The Federal Database Finder*, passim.

7. U.S. Congress, House. Committee on Government Operations. *Electronic Collection and Dissemination of Information By Federal Agencies: A Policy Overview*. Report. No. 99-560, 99th Cong., 2nd sess., 1986. (Washington, D.C.:GPO, 1986)

8. Ibid.,passim.

9. Ibid., 3.

10. OTA, *Federal Government Information Technology*, 142-143.

11. U.S. Congress, *Electronic Collection and Dissemination*., 47-52.

12. Congress passed legislation to authorize EDGAR and establish system requirements and reporting procedures. Public Law 100-181. Sec.101 (1987) (adding Sec.35A to the Security And Exchange Act of 1934). See U.S. Congress, House, Committee on Energy and Commerce, *Securities and Exchange Commission Authorization Act of 1987*. House Rep. 100-296, 100th Cong., 1st Sess. (Washington, D.C. GPO: 1987).

13. See the floor statement of Rep. Glenn English, Chairman of the House Subcommittee on Information of the House Government Operations Committee during debate on H.R. 2600. 133 *Congressional Record*, H7418 (Sept. 10, 1987) (daily ed.).

14. United States Securities and Exchange Commission, *SEC Request for Proposals For an Operational Edgar System*. Solicitation No. SEC HQ1-86-R-0637 (Washington D.C. SEC: May 7, 1986) C-110-C-112.

15. Ibid.

16. U.S. Congress, *House Report on Electronic Collection and Dissemination*., 62.

17. For a detailed discussion of the Environmental Protection Agency and public access issues, see pp. ______below.

18. Peter Hernon and Charles R. McClure, *Federal Information Policies in the 1980's:Conflicts and Issues*. (New Jersey: Ablex Publishing Co. 1987), 179-83.

19. Ibid.

20. U.S. Congress, *House Report on Electronic Collection and Dissemination*., 13-15, 62-64. Information USA, *The Federal Database Finder*, passim.

21. Information USA, *The Federal Database Finder*, passim.

22. OTA, *Federal Government Information Technology*, 152-153.

23. The average cost of government information databases provided through DIALOG by the private sector is $93.26 while databases provided directly to DIALOG by the collecting agencies costs $45.70 per connect hour. Statement of Dr. Harold B. Shill, Chair Legislation Assembly American Library Association, *Hearings on Federal Information Policy* before the Subcommittee on Science, Research, and Technology of the House Committee on Science, Space, and Technology, July 14, 1987.

24. Support for the "public's right to know" is a widely shared *principal*. However, in reality, access rights have not been won easily. The Freedom of Information Act was passed in 1966 but was undermined by agency interpretations. The 1974 Amendments required an override of a veto by President Gerald Ford to enact into law. The Reagan Administration has devoted considerable time and effort to scale back citizen access rights under the FOIA. Peter Hernon and Charles R. McClure, *Federal Information Policies*.,52-66; Allan Adler, ed., *Litigation Under the Federal Freedom of Information Act and Privacy Act*. 13th ed. (American Civil Liberties Union Foundation 1988),4-6; Eve Pell, *The Big*

25. 5 U.S.C. Sec.552 (1982). The Act was partly amended in 1986 as part of the Anti-Drug Abuse Act of 1986. Freedom of Information Act of 1986, Pub. L. No. 99-570,, Title I, Subtitle N, Sec. 1801-1804, U.S. Code Cong. & Ad. News (100 stat.)(amending 5 U.S.C. Sec. 552).

26. Senate Report No. 93-854, 93rd Cong., 2nd Sess. 12 (1974).

27. 44 U.S.C. Sections 3501-3520 (Supp. 1986).

28. 44 U.S.C. Sec. 3501. (Supp. 1986)

29. Ibid.

30. 44 U.S.C. Sec. 3504 (Supp. 1986)

31. Office of Management and Budget, *Management of Federal Information Resources: Circular No. A-130*, 50 *Federal Register* 52730-52738 (December 24, 1985)

32. Ibid., 52736.

33. Circular A-130 has been used by the Reagan Administration to justify severe cutbacks in the availability of public information. See Donna Demac, "Keeping the Citizens Uninformed," in *Government Information: An Endangered Resource of the Electronic Age* (Special Libraries Association 1986) 25-41; John Shattuck and Muriel Morisey, "The Dangers of Information Control," *Technology Review* (April 1986), 70-72; OMB Watch, *Paperwork Reduction: The Quick Fix of 1986* (OMB Watch November 1986); American Library Association, *Less Access to Less Information by and About the U.S. Government: A 1981-1987 Chronology* (ALA 1988). Thus, one is tempted to argue that its restrictive policies on electronic data dissemination are cut from the same cloth. Unfortunately, here the Administration is simply carrying out the dictates of current law. Citizens have not demanded nor won rights of access to electronic data.

34. OMB, *Circular A-130*. Sec. 6(f), 52735.

35. Ibid. Sec. 7(g), 52736.

36. See *Yeager v. Drug Enforcement Administration*, 678 F.2d 315 (D.C. Cir. 1982)

37. See *SDC Development Corp. v. Mathews*, 542 F.2d 1116 (9th Cir.1976).

38. *Dismukes v. Interior*, 603 F. Supp. 760 (D.D.C. 1984); See also *Yeager v. Drug Enforcement Administration*, 676 F.2d 315 (D.C. Cir. 1982).

39. OMB, *Circular A-130*, Sec. 8(a)(7), 50 *Federal Register*, 52736.

40. 42 U.S.C. 11023 (j) (Supp. 1988). A discussion of this public access electronic database appears at pages   below.

41. OMB *Circular A-130*, 50 *Federal Register*, 52547 (Appendix IV).

42. Ibid., 52736.

43. Ibid.

44. Peter Hernon and Charles R. McClure, *Federal Information Policies*., 164-194. *American Library Association Less to Less Information by and About the U.S. Government: A 1981-1987 Chronology*. (ALA Washington Office Feb. 1988), passim.

45. OMB, *Circular A-130*, 52748.

46. Ibid.

47. Ibid., 52748. (emp. sup.)

48. Ibid., 52735.

49. 5 U.S.C. 552 (b) sets out nine exemptions for matters such as classified national security information, trade secrets, and personal information which would violate personal privacy. If the government contends and the courts agree that information sought under the FOIA is within one of these exemptions, the information is not disclosed. See Allan Adler ed., *Litigation under the Freedom of Information Act*., passim.

50. New communications and computer technologies were so identified in a seminal book on the need to rationalise the new technologies with First Amendment values. Ithiel de Sola Pool, *Technologies of Freedom* (Massachusetts: Belknap Press 1983).

51. Alan F Westin, "The Technology of Secrecy," in Steven Gillers and Norman Dorsen, eds., *None of Your Business*. (New York: Viking Press 1974).

52. Ibid.

53. Ibid., 305. (emp. supp.).

54. Ibid., 311.

55. Ibid., 311.

56. Ibid., 312.

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57. Ibid., 312.

58. Ibid., 317.

59. Ibid., 319-320

60. See also Alan F. Westin, "Computers and the Public's Right to Know," in *Advances in Computers Volume 17* (Academic Press 1978).

61. *Public Citizen,et.al. v. Occupational Health and Safety Administration* (Civil Action No. 86-0705 U.S.D.C. District of Columbia 1988).

62. Plaintiffs' Memorandum in Opposition to Defendant's Renewed Motion To Dismiss and Motion for a Protective Order And In Support of Plaintiffs' Motion for Partial Summary Judgment, *Public Citizen, et.al. v. Occupational Safety and Health Administration* (Civil Action No. 86-0705 U.S.D.C. District of Columbia), Feb. 2, 1988.

63. Public Citizen cites proposed Department of Labor regulations, 29 C.F.R. Sec. 70.5 which state that "Nothing in [the FOIA] requires any agency or component to create a new record, either manually from preexisting files or through creation of a computer program, in order to fill a request for records." Ibid., 16.

64. Ibid., 3.

65. Ibid., 9.

66. Ibid., 24. Unfortunately, this is not likely to be resolved by the courts since OSHA, under the pressure of litigation, has now discovered that the data can be accessed without reprogramming.

67. *National Security Achieve Request Under the Freedom of Information Act to John E. Carter Chief of FOI and Privacy Acts Office of Administrative Services United States Department of Energy* (September 24, 1987).

68. Ibid.

69. Letter to Quinlan Shea, Jr., National Security Archive from Bonnie C. Carroll, Deputy Assistant Manager for Information Services Department of Energy. (October 22, 1987).

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70. *Decision and Order of the Department of Energy Appeal by Petitioner National Security Archive*. (Case No. KFA-0158) (December 18, 1987).

71. The Department of Energy asked the Office of Hearings and Appeals to reconsider its decision to require reprogramming on the grounds of cost and time. *Memorandum To George B. Breznay Director Office of Hearing and Appeals Regarding Freedom of Information Act Appeal filed by the National Security Archive*. (Case No. KFA-0146. January 19,1988). The Office reaffirmed its decision. *Decision and Order of the Department of Energy Motion for Clarification* (Case Number KFA-0158 May 26, 1988).

72. Letter from David Burnham to Donald K. Ross Director Rockefeller Family Fund (July 29, 1987)

73. Even though computerized information has no copyright, citizens have been denied requests for the electronic version of public data. *SDC Corporation v. Mathews*, 542 F.2d 1116 (9th Cir. 1976) (electronic tapes containing database of bio-medical literature are not agency records for FOIA purposes and are not available pursuant to an FOIA request). See also *Clark v. United States Department of the Treasury and W. M. Gregg*, (Civil Action No. 84-1873 U.S.D.C. Eastern D. Penn. 1986)(denial of computer data on treasury bonds even though plaintiff prepared to pay programming costs to extract data). *Letter to Honorable C. William Verity Secretary of Commerce from Rep. Glen English* (Feb. 19,1988)(requesting explanation why citizen was denied a copy of an on-line database available free from the government). *Appeal to Administrator Animal and Plant Health Inspection Service By Public Citizen on behalf of Hillel Gray*. (June 15, 1988)(FOIA appeal based on agency refusal to provide revised computer tapes similar to those which plaintiff had previously obtained from USDA because USDA had now decided these were not agency records under FOIA or would place an unreasonable burden on the agency to produce them in computerized rather than published form).

74. See e.g. *Long v. IRS*, 596 F.2d 362 (9th Cir. 1979), *cert. denied*, 446 U.S. 917 (1980).

75. Letter from David Burnham to Donald K. Ross Director Rockefeller Family Fund (July 29, 1987)

76. *Long v. IRS*, 825 F.2d 225 (9th Cir. 1987).

77. Jerry J. Berman,"National Security vs. Access to Computer Databases:A New Threat to Freedom of Information," *Software Law Journal* (Winter 1987)(Reprint)

78. Statement of Donald Latham, Assistant Secretary of Defense, *Computer Security Policy:Hearings on NSDD 145 Before the Subcomm. on Transportation, Aviation and Materials of the House Comm. on*

Science and Technology 99th Cong. 1st Sess. (1985)

79. Michael Schrage, "U.S. Seeking to Limit Access of Soviets to Computer Data," Washington Post, May 27, 1986, at A 18, col.3.

80. National Telecommunications and Information Security Policy No.2, National Policy on Protection of Sensitive, But Unclassified Information in Federal Government Telecommunications and Automated Information Systems (October 29, 1986)

81. Berman, National Security vs. Access to Computer Databases, 9.

82. Ibid., 6.

83. Public Law 100-235.(1988) (The Computer Security Act of 1987)

84. U.S. House, Report On Electronic Collection and Dissemination, 27-36.

85. Berman, National Security vs. Access to Computer Databases, 11.

86. U.S. House, Report On Electronic Collection and Dissemination, 27-36.

87. For example, by one estimate only 1% of all voluntary organizations were users of on-line information services in 1985. Alan F. Westin, Reference Point Prospectus (Unpublished September 1987), 27.

88. Public Law 99-499 (1986).

89. 42 U.S.C. Sections 1101-11050 (Supp.1988).

90. Environmental Protection Agency, "EPA Announces New Toxic Chemical Reporting Requirements," Press Release (February 8, 1988)

91. 42 U.S.C. 11023 (Supp. 1988).

92. U.S. Congress, House. Conference Report Superfund Amendments and Reauthorization Act of 1986. 99th Cong. 2nd Sess. Rept. 99-962 (October 3, 1986). 299.

93. Ibid.

94. "The Revolution Ahead: Public Information on Toxic Emissions---CMSA talks with EPA's Charles Elkins," Chemical Times and Trends (January 1988).

95. Ibid., 18.

96. Ibid. , 22.

97. Ibid.

98. Ibid., 22-23.

99. Under the FOIA, 5 U.S.C. 552(a)(6)(A)(i), agencies must reply within 10 working days, but some agencies take longer and others have significant backlogs. Allan Adler, Litigation Under the Federal Freedom of Information Act. 12-13.

100. Charles Elkins, "Risk Communication: Getting Ready for 'Right to Know' EPA Journal (November 1987) Elkins gives this example to demonstrate some concerns that the data could cause public alarm and be misleading because the chemical releases in the example may not be unreasonable or cause harm since there is no necessary direct correlation between emission levels and exposure levels. Nevertheless, it is a nice illustration of electronic information and computer analyses.

101. Chemical firms are planning just such use of EPA toxic release data. "Pollution:Trying to Put the Best Face on Bad News: Manufacturers Struggle to Cope with a New Disclosure Law," Business Week (July 18, 1988), 76-77.

102. Environmental Protection Agency, Overview of Requirements for the Toxic Chemical Release Inventory (TRI) (Prepared by CRS Systems, Inc. November 6, 1987).

103. Environmental Protection Agency, Public Report For Options to Make the Toxic Release Inventory (TRI) Data Base Accessible to the Public (Prepared by CRS Systems, Inc. March 4, 1988)

104. 53 Federal Register 7567 (March 9, 1988) announcing public hearing on TRI Database public report on March 30, 1988 at EPA.

105. U.S. House, Report On Electronic Collection and Dissemination., 18-23.

106. Ibid. See also Robert Gellman, "Federal Information Practices," in Special Libraries Association, Government Information:An Endangered Resource of the Electronic Age (Special Libraries Association 1986), 22. "You have to be aggressive in guarding your own interest. You should insist on getting involved in the planning. You have to identify your own needs and how these new electronic systems will affect your operations."

107. Founding organizations of the Working Group include the Advocacy Institute, Citizens Clearinghouse for Hazardous Wastes, Environmental Policy Institute, National Center for Policy Alternatives, National Wildlife Federation, OMB Watch, Public Citizen, and U.S. Public Interest Research Group. The Environmental Defense Fund, Natural Resources Defense Council, and Environmental Action Foundation have also joined.

108. The technical assistance arrangement was worked out with the Public Interest Computer Association and the ACLU Project on Information Technology. See Letter to Jerry Berman ACLU and Denise Vesuvio PICA from Carol Dansereau Environmental Action Foundation On Behalf of the Community Right-to-Know Working Group April 22, 1988.

109. Environmental Protection Agency, Public Report For Options to Make the Toxic Release Inventory (TRI) Data Base Accessible to the Public (Prepared by CRS Systems, Inc. March 4, 1988)

110. Ibid. Executive Summary. , 2.

111. Ibid. Executive Summary., 2.

112. Ibid. Chapter 2., 2.

113. Ibid. Chapter 2, 1.

114. Ibid. Executive Summary., 4.

115. Ibid. Executive Summary., 4-5.

116. Ibid. Executive Summary., 2.

117. Ibid. Chapter 4., 7.

118. Environmental Protection Agency, EPA/NLM Interagency Agreement: Toxic Release Inventory Public Database (Draft II, June 20, 1988).

119. Elkins Interview in Chemical Times and Trends, 18.

120.Public Report. Executive Summary p.4

121. former footnote 90

122. Report at page _____

123. EPA, Draft EPA/NLM Interagency Agreement., 10.

124. EPA, Public Report. Exhibit 3-2. Chapter 3., 7.

125. The EPA rationale for choosing Tier A may indeed prove more costly. While at one point, the Public Report makes the assumption that user demand is a function of "price," at other points the Public Report suggests that user demand will increase if it is more user-friendly. For example, in weighing fee waiver costs to the government, the Public Report states that those costs will "increase by tier, because usage is expected to increase with improved capabilities." Ibid. Chapter 2., 4. In fact, in estimating costs, the EPA did not take into consideration "usage increases which may result as the result of an expanded user community..." Ibid. Chapter 2., 6. It is therefore possible that by implementing a user-friendly system, system costs to the government could decrease.

126. Elkins, Chemical Times and Trends., 18.

127. 42 U.S.C. Section 11023 states that the database must be "accessible by computer telecommunications...to any person on a cost reimbursable basis." "Any person" must mean that Congress had some kind of user-friendly system in mind. Certainly Congress knows that most citizens cannot use basic computer data and search and retrieval software or statistical software to sort and index data. Nor is it reasonable to assume that Congress added the database requirement so that citizens could "dialup" and access only reports prepared by EPA. The statute states that the database must be accessible by "any person" and not "any person who is a sophisticated computer user." EPA's interpretation of basic requirement of the law appears contrary to congressional intent.

128. See discussion at page ___above.

129. Charles Elkins, "Risk Communication: Getting Ready for 'Right to Know'" EPA Journal (November 1987)

130. See Public Interest Computer Association and American Civil Liberties Union, Initial Outline Toxic Release Inventory Database Interagency Agreement (Public Interest Computer Association, Washipgton D.C. April 26, 1988). The document identifies the range of issues that must be resolved and specified in the interagency agreement between EPA and NLM. EPA and NLM have both expressed the view that this document of system requirements is an excellent basis for serious negotiations. The Environmental Working Group and Chemical Manufacturers have also concurred in this judgement.

131. Environmental Protection Agency, Public Online Access to TRI Data: Discussion of Fee Waiver Criteria (Prepared by Putnam, Hayes & Bartlett, Inc. Washington, D.C.) March 3, 1988

132. OMB, Circular 130. passim.

133. Ibid.

134. According to one study, revenues for on-line data bases amounted to $3.65 billion in 1984 and recent estimates indicate that revenues are growing at an annual rate of 15%. See Berman, National Security vs. Access to Computer Databases, Note 1, 1. OTA, Federal Government Information Technology., 142.

135. U.S. Congress, House Report on Electronic Collection and Dissemination. passim.

136. EPA, Public Report. Chapter 2., 4-5.

137. Ibid. Chapter 3., 8-11.

138. See discussion of unclassified sensitive information at pages _____ above.

139. EPA, Public Report. Chapter 3., 19.

140. Ibid. Chapter 3., 22.

141. Ibid. Chapter 2., 10.

142. Ibid. Chapter 4., 6.

143. Ibid. Chapter 3., 11.

144. Ibid. Executive Summary., 3.

145. Mary Gardner Jones and Nancy Chasen, The Potential of Telecommunications for Nonprofit Organizations (Consumer Interest Research Institute Washington, D.C. 1987)

146. On May 11, the Public Interest Computer Association sponsored a meeting of TCN, BITNET, PEACENET, and other non-profit online providers to discuss how to increase service to the nonprofit community. Memorandum to Participants of the Online Providers Meeting from Denise A Vesuvio, Director, Public Interest Computer Association (PICA: Wash. D.C. May 11, 1988).

147. Reference Point proposes to establish an on-line electronic clearinghouse for non-profit organizations which would provide electronic directories of members; store and disseminate member documents, reports, and alerts; and provide "gateways" to online government and commercial databases. It is in the developmental stages. See Alan F. Westin, Reference Point: A National Computerized Database, Communications Network, and Historical Archive FOr the Non Profit Sector and the Active Citizenry (Prof.

Alan F. Westin 1100 Trafalgar St. Teaneck, N.J. 07666)

148. See Opinion, United States of America v. Western Electric Co. Inc., et.al., Civil Action No.82-0192, slip op.(D.D.C. March 7, 1988).

149. See Frances Seghers, "The $3 Billion Question: Whose Info Is It, Anyway?" Business Week (July 4, 1988), 106-107.

150. U.S. Congress, House, Hearings before a Subcommittee of the Committee on Government Operations, Electronic Collection and Dissemination of Information by Federal Agencies. 99th Cong. 1st Sess. April 29, June 26, and October 18, 1985 (Washington: GPO: 1986).

151. 5 U.S.C. § 552a(1) and (2). (1982).

152. See Association of Research Libraries, Technology and U.S. Government Information Policies:Catalysts for New Partnerships (ARL October 1987. The Joint Committee on Printing is circulating a new plan for electronic pilot projects for public comment. See Letter to Members of the Information Community from Rep. Frank Annunzio, Chairman and Wendell H. Ford, Vice Chairman (July 13, 1988) (attaching Dissemination of Information in Electronic Format to Federal Depository Libraries: Proposed Project Descriptions June 1988) The private sector must understand the need to provide electronic databases and products through libraries and the library community has to understand the issues posed by electronic pilots. Since access to electronic information is often the same as disseminating information, a line needs to be drawn to protect electronic publishers from having the libraries become tax-supported publishers of information. While government documents are public and may be copied on a copy machine, this is not the equivalent of electronic "downloading" of data. For example, would a library which has created a database of government documents with an intricate menu system take kindly to a "borrower" asking,not to search the system, but obtain a "copy" of the database so that he or she can mount it on a computer and dispense the information free of charge to anyone who dials up the bulletin board?

153. Statement of Glenn English, Congressional Record, (September 10, 1987) H7415.

Mr. Wise. Next will be Dr. Alan Westin, professor of public law and government, Columbia University and chairman of Reference Point Foundation.

Dr. Westin.

STATEMENT OF DR. ALAN WESTIN, PROFESSOR OF PUBLIC LAW AND GOVERNMENT, COLUMBIA UNIVERSITY, AND CHAIRMAN, REFERENCE POINT FOUNDATION

Dr. Westin. Thank you. Chairman Wise and Mr. Schiff, I'm appearing today in two capacities, the first as a professor of public law and government at Columbia University. For the last 30 years I've been studying and writing about the impact of technology on organizations, institutions, society, and the individual. In 1973, I conducted the first study that had been done of the impact of Federal computer use on public access. I'd like to offer a copy of that for the record and add it to the hearing record.

Mr. Wise. It will be made a part of the record. Thank you.

[See app. 1.]

Dr. Westin. Secondly, I'm appearing as the president of Reference Point Foundation, which is a new nonprofit and nonpartisan organization dedicated to facilitating access to public information by the voluntary sector and active citizens.

My testimony today focuses on the 95 percent of Federal information which is either mandated to be issued publicly or which is readily available to public dissemination. I am not focusing on the 5 percent of Federal information in which freedom of information claims and disputed access is involved.

The main conclusion of my testimony is that, because of current Federal information policies and the way in which information technology has been applied thus far in Federal agencies, the United States is in great danger of becoming an information autocracy. We find that business, science, government, and the media have at their fingertips the stocks and flows of Federal information and are using it for quite legitimate reasons to further their affairs. They are, as I put it, the lords of the new information age.

But this is not true of the voluntary sector and the active citizenry. As I'll show, in the past 5 to 10 years, this section has actually lost ground in their ability to locate and use Federal public information. They are becoming the information peasants of the new age.

This is a serious danger, I believe, because of the special position of the voluntary sector in American social and political life. It is one of the key positive forces in our system. President Bush talks about the thousand points of light. We all know that we would not be able to carry out our human and social services, our cultural affairs, our oversight of government, our creation of new ideas for social and political change, were it not for the large, important voluntary sector.

Just to remind you of some numbers, there are 21,000 national associations and 50,000 regional and local associations. If you add the organizations the IRS lists as the tax-exempt organizations under Federal tax law, we're talking about a community of approximately 500,000 voluntary organizations at the local, State, regional, and national level. This sector, my testimony points out, is being very badly hurt by the way in which Federal information policies and technology applications have gone forward.

In my testimony you will find the results of a poll that Reference Point conducted using 88 nonprofit organizations in a wide variety of fields. There's a table in the testimony that shows you how those are distributed. Eight-three percent of these are not presently using Federal online computerized information. Primarily, 40 percent say they don't know how to locate it—they're simply unable to find the Government information that they need. Thirty percent cite as the primary reason that it's too costly. Only 14 percent, somewhat surprisingly, say that they don't have the right equipment or they don't have the right experts to handle it. And 16 percent say they don't need access to online Federal information.

Incidentally, our poll is confirmed by a statistical survey that GAO did in 1988, this reported answers to questions from 173 national associations that Federal information uses. There was a very close fit between our poll and the representative statistical survey that GAO did.

When Reference Point researchers asked the organizations what was happening, they cited a group of reasons why they had once been competent to get access to important Federal information but how each of those favorable factors had changed in the 1980's.

To summarize these very briefly: First, printed materials were readily available to them and were well indexed. Second, they could get access to these materials directly or through libraries. Third, agency staffs, they found in the 1970's, had the time and the resources to answer their inquiries and to help them find the information they needed. Fourth, their own research staffs were adequate in money and in publication-acquisition budgets to serve their information location needs. Finally, there was much less time pressure on them to get the information fast.

Each one of those five conditions has been turned around in the 1980's. First, many of the important publications are not available any more in hard copy, or are issued in very limited supply, or voluntary organizations can't get them in an easy way by being on the mailing lists of agencies because they can't stay on those mailing lists.

Second, there is no directory that is available to locate the content and ways to acquire the important electronic data.

Third, sharp cutbacks in agency information staffs now have undercut that kind of support mechanism to the voluntary sector.

Fourth, their own costs of maintaining information staffs and travel to libraries or the Federal dissemination centers has been very hard hit by budget reductions and they are finding that they can't devote as much time to information collection as they once could.

Finally, these organizations now need Federal information much faster in order to do their jobs. The old pace simply is not responsive any longer to the speed with which public policy issues need to be dealt with or in which their role as voluntary sector organizations is needed.

Now, as a result of that kind of major shift from the 1970's to the 1980's, there are a series of concrete adverse impacts on the voluntary sector which we summarize in our testimony. These are all drawn directly from the comments of staff directors and information experts in the organizations that we examined.

First, important research studies into social problems are not being undertaken. The information cannot be obtained.

Second, testimony before congressional committees is not as well documented as it should and could be.

Third, human and social service agencies are not able to connect their clients efficiently to the needed available services in the Federal Establishment.

Violations of Federal regulatory laws and regulations cannot be tracked and publicized as closely as needed by various kinds of watchdog groups. Finally, evaluations of costly Federal programs and of agency administration are suffering because the proper indicators are not even being collected any more or not being combined with other Federal data to provide adequate analysis.

Incidentally, in my testimony I point out that that's a theme that we heard from the conservative organizations that we polled as much as from the liberal ones. The liberals may be concerned with tighter regulation or social change, the conservatives may be concerned with detecting fraud, waste, and abuse, but they both feel that the Federal Government is not collecting the adequate indicators with which they can perform their duties of evaluation of agency performance.

Comparatively also, our poll shows that the nonbusiness associations are losing ground to the technologically sophisticated business associations in obtaining and applying Federal trend, regulatory and program data. One research director summed it up, I think, very well. He said, "It is the quality of well informed and rational public discourse that suffers. Public interest groups have to speculate and shout more because they can't get the data on which to make documented analyses and more fine tuned judgments."

Or, one other quote, a mental health organization director commented, "Obtaining access to Federal information has never been a level playing field. But now it's getting less level all the time."

If that's a correct picture of the way the voluntary sector is being disadvantaged, and I believe it is, the question is what can we do about it? Let me underscore the fact that technology is not the problem here. We can use computer and communication technologies to carry out any public policies that the Congress sets, that the executive branch administers, or that the voluntary sector learns to use. We're talking really about the way in which the technology will be applied to the problem of public access.

I think that there are three primary actors whose efforts have to be coordinated to turn around this slide toward the information-autocracy society. First of all, in the executive branch, our interviews with quite a number of Federal agencies that are running various kinds of data bases indicated that they want to get much of their information out more effectively to the public. But what they must have from OMB and from the executive branch is clear guidance as to how to do that, budget allocations to be able to spend the money and to design system efforts in order to accomplish that, and a sense of prioritizing.

Second, Congress. I think Congress really set an excellent lodestar with its EPA legislation on the Toxic Release Inventory. It said, "The public has a need to know. This agency must disseminate the information via an accessible, automated information system, so that local communities, local police and fire departments, all kinds of groups can get the access to information they need."

I believe that two things have to happen from Congress. First, subject matter committees need to write the same legislative mandates or oversight mandates into the work of many other Federal agencies than EPA—consumer agencies, regulatory agencies, human service agencies, et cetera—whose information is equally needed and sought by the voluntary sector and by millions of individual citizens.

Second, a committee like yours and the counterpart committees in the Senate need to exercise continuing oversight of the effectiveness of the Federal agencies in carrying out such a policy.

Finally, the voluntary sector itself has to get its act together. In 1973, when I did my study of how Federal computerization was affecting FOIA access, I pointed out that the voluntary sector had not yet understood how critical to its own viability and effectiveness access to computerized information would become. I warned at that time that the inability of the voluntary sector to organize itself, to advocate for its access to information, and to indicate what kind of information it needed and in what formats it needed it for effective use, could raise serious problems as computerization advanced. And, as I've now come to feel, the voluntary sector needed to create its own nonprofit instrument, its own system for disseminating information that would meet its requirements.

Let me turn, therefore, to Reference Point, which is an effort to be directly responsive to the obligations and the interests of the voluntary sector.

As I mentioned, we are a new nonprofit foundation. Our goals are to use advocacy, organization, education, and advanced information technology to make sure that the voluntary sector and the active citizenry have access to public information at the Federal, State, and local government levels, and also to collect and disseminate the public information of the voluntary sector itself.

We have on our advisory committee a very broad representation of the groups that have a major stake here. The advisors include the Lutheran Resources Commission, the American Civil Liberties Union, the American Red Cross, the American Enterprise Institute, Volunteer Cancer Care, the National Urban League, Boys Clubs of America, the League of Women Voters, United Way, the National Urban Coalition, and the American Association for Retired Persons. That list gives you, I think, some sense of the stakeholders who feel that this is a vital issue for them, and on which they clearly are seeking congressional help.

But we are a self-help effort essentially and our program is both a general one for public information, which is described in the booklet that is attached to my testimony, and also a program directed to facilitate better dissemination of Federal public information.

Responding to the survey results that are described in my testimony as to what the nonprofit sector needs from Federal information, we are embarked on a program to do three things within the next year.

One, create and maintain a classified subject—driven directory of all Federal computerized information, starting with the list of such data bases which OMB has recently compiled and with the directories that many Federal agencies have and will readily supply. We see our function as meeting the 40 percent of the voluntary sector respondents who said, "We just don't know what's there. We don't know how to get to it."

Second, we will acquire, format, and disseminate those Federal data bases that are important to the voluntary sector, and supply these at noncommercial rates, much lower than what they are presently sold for, where they are disseminated. At the same time, we will identify those important bodies of Federal information for which there is not seen to be a commercial market—and dissemination is not presently available—but which are of vital importance to the voluntary sector. Those, we will put together from the Federal data bases or combinations of State and Federal information to directly serve the user communities in the voluntary sector that have identified these as their high priority access items.

Finally, we are creating a national online freedom of information forum that will be a gathering place for information and ideas about how to facilitate public access. This forum will have as its users all the voluntary sector organizations that access Federal information. It will be open to the media, to voluntary sector staffs, to scholars and experts in the field, and to State and Federal freedom of information officers. Its purpose will be to order to try to dramatically improve access and administration under existing law and also to suggest models for new laws and for new regulations, in order to deal with the unique elements of computerized information that are not covered by existing Federal or State statutes.

We see the effort to provide public access to Federal public information as one that will require a combination of Government outreach efforts; continued work by the commercial sector to disseminate the information for which there is a commercial market; a nonprofit organization such as ours to directly serve the interests of the voluntary sector and individual citizens, the library world which will be directly connected into Reference Point via our system being available in public libraries, university libraries and other forms of public access terminals located in senior citizens centers, youth centers and other public access sites.

It will take that kind of combination if we're to use the technology and policy to serve the goal of public information dissemination in the 1990's, and to avert the era of information lords and information peasants that could develop if we fail to adopt effective measures.

Thank you.

Mr. **Wise**. Thank you very much.

[The prepared statement of Dr. Westin follows:]

Testimony of Dr. Alan F. Westin, President, Reference Point Foundation, and Professor of Public Law and Government, Columbia University

Before the Subcommittee on Information, Justice and Agriculture of the House Committee on Government Operations Hearings on

"Federal Information Dissemination Policies and Practices,"

Washington, D.C., April 18, 1989

INTRODUCTION

Chairman Wise and Members of the Subcommittee, I appreciate the invitation to appear today at your hearings on "Federal Information Dissemination Policies and Practices." I am appearing in two closely related capacities. First, I am drawing on thirty years of scholarly study and public-policy advocacy as a Professor of Public Law and Government at Columbia University, whose work has focused on the impacts of technology on government, society, and the individual.

Second, I will be presenting the views of the Reference Point Foundation, a new non-profit organization that I head. Reference Point is dedicated to organizing and applying advanced information technology to serve the interests of America's voluntary sector and active citizenry, to insure that these sectors are not left behind in the move by business and government to harness the power of information technology in the conduct of their affairs. (A detailed booklet describing the history, goals, organization, staffing, advisors, and programs of Reference Point appears in the Appendix. A discussion of Reference Point's plans for facilitating public access to federal public information appears later in this testimony.)

IMPORTANCE OF THESE HEARINGS

We believe the hearings you are opening today are among the most important for the future operations of American democracy that will be held by the 101st Congress. Though they seem to be about "housekeeping matters" and to lack the glamor of hearings into crime, drugs, jobs, the environment, civil rights, disarmament, or foreign aid, these hearings are potentially as critical as any that will be conducted on specific areas of domestic or foreign policy.

That is because we are talking today about the central dynamic of government operations in a high-technology age -- the policies for information collection, combination, analysis, and dissemination by the Federal Government. These policies will shape (1) the way government agencies go about performing their assigned functions; (2) the way these government information processes contribute to the common storehouse of knowledge in society about our lives and affairs; and (3) the way government information policies do or do not assist voluntary groups and individual citizens to be informed about and participate in the making of public policy and the conduct of the public's affairs.

It is precisely because Federal information policies are so crucial in these dimensions of democratic governance that we must recognize and pay attention to what has been happening.

THE DANGERS OF BECOMING AN INFORMATION AUTOCRACY

Put into the simplest terms, the ability of the voluntary sector and the 80-90 million citizens they represent to learn about the existence of Federal public information and to obtain access to it at acceptable costs and through non-expert processes has been gravely weakened in the 1980's by the way Federal information policies have developed and the ways that electronic information technologies have been applied.

And, unless these trends are reversed, I believe historians in the middle of the 21st century will record that the 1990's was the decade in which, despite well-intentioned lip service to the public's right to know and Freedom of Information principles, the United States was allowed to become an Information Autocracy.

We would become a nation in which the financially and technologically well-endowed -- government, business, science, and the media -- had at their fingertips the current stocks and flows of critical Federal information (collected at taxpayer expense) and could use these to serve their organizational interests and participate effectively in public policy-making. They would be the Lords of the Information Age.

But the majority of the non-commercial segments of the voluntary sector and individual citizens would, I fear, become Information Peasants. As more and more Federal-agency information goes into computerized form (with many files kept only in computerized form), and as reliance on traditional printed material from government becomes more difficult and time-consuming to locate and acquire, most voluntary sector organizations and middle to low income citizens will be informationally disenfranchised.

They will find it increasingly difficult to locate and use Federal information resources to improve their personal and family lives, serve their social and cultural interests, assert their economic and political views, and monitor the operations of the Federal Government as effectively as they did in the past.

In short, through a failure by the Federal Government thus far in the 1980's to recognize creative opportunities to use information technology to sustain or even enhance public-interest access, we could wind up in the next decade reversing the trend toward increased voluntary sector and citizen access to government information that has been our proud accomplishment from the early days of the Republic through the 1970's.

Let me document why I think these dangers are far from hypothetical or matters of hyperbole.

SOME DEFINITIONS AND COMMONLY HELD PRINCIPLES

At the outset, it should help to list briefly some definitions of key terms, to note some basic principles on which almost all observers would agree, and to identify the main areas of policy disagreement involving federal information activities.

1. By federal public information, this Subcommittee and commentators such as myself are talking about information of federal agencies that is collected and processed to carry out government missions and programs and is not closed to public dissemination or access under applications of restrictive statutes such as the Privacy Act, the exemptions sections of the Freedom of Information Act, or similar statutes.

2. Though this Subcommittee has dissemination of federal public information through electronic means as its stated concern, that process is inextricably bound up with policy issues

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as to the collection, combination, and analysis of federal public information. (I will show how related these aspects are later in my testimony.)

3. The collection, combination, and dissemination of Federal Government information to other government levels (state and local), business and labor, the media, voluntary sector groups, scholars, and to the general public is a valuable, necessary, and well accepted function of the Federal Government. This task is even more critical today for managing our economy, diplomacy, society, and personal affairs than in the days of the Founding Fathers when the principles of open government and public access to government information were first enunciated.

4. Achieving efficiency and controlling costs in the management of Federal information has become a major and proper concern of the Executive and Legislative Branches, and of the American taxpayer. With $6 billion estimated by the U.S. Office of Technology Assessment to be the cost in FY 1987 of disseminating federal information (not counting the costs of acquiring and using it within the government), examining the need for collecting and disseminating federal information, avoiding duplication, using non-governmental resources for appropriate public dissemination, and insuring the most efficient means of meeting user needs are entirely proper policy objectives. And, in an era of sharp budget cutbacks for all federal government activities, it is a reality that moneys for information activities often have to compete with applying available funds to serve clients of federal assistance programs or retain agency personnel for program operations.

5. Electronic or information technologies are tools and not determinants of federal information policies. Except in the fantasies of science-fiction writers or the technologically illiterate, using computer hardware and software or telecommunications does not force Federal officials or agencies to decrease dissemination of federal public information. Whether public access is decreased, increased, or remains roughly the same as in the pre-computer era are matters of policy, not technology. Electronic tools can, cost-effectively, serve whatever

dissemination goals are adopted, including major improvements in public location of and access to government information, if government policy makers so mandate.

6. However, one major feature of storing and/or disseminating federal information in computerized formats is that public users have to learn basic skills to access such data, must buy or have subsidized access to basic equipment (e.g., terminals to access online data or optical disk readers to use that storage medium), and must be given adequate directories of available information to learn what is there. To the extent that any major sector of the American social system does not acquire such skills and equipment, this becomes a major equity issue for our society, and must be dealt with if key balances in our democratic system are to be preserved.

7. Questions of information policy are sometimes caught up in larger socio-political issues. There are information policy elements in debates over the desirable size of the Federal Government, budget-allocation disputes between various government programs, regulation versus deregulation policies, functions for the public versus the private sectors, etc. In each of these, questions about what information federal agencies should collect, use, and disseminate are sub-issues in the larger controversies. There is probably no way to avoid this, since information policies are often the means for accomplishing (or defeating) larger social policy goals. It helps, however, to recognize this relationship, and to make it publicly explicit in debates over information policy.

8. The Federal Government, unlike some Western European nations and Japan, does not have either a unified National Information Policy or a single agency or official charged with defining or administering a unified policy. Ours tends to be a mixed private-public and area-specific decision-making system on such issues. While the Office of Management and Budget has the closest thing to a "general brief" to oversee federal information policies, its definition of mission and its interventions have been far from the comprehensive role found in some other democratic nations.

9. The major Federal statutes on information policy are largely antiquated and confusing when it comes to dissemination of and public access to computerized federal data. The Freedom of Information Act, Privacy Act, and Paperwork Reduction Act were written for a manual records environment, and their key terms leave many critical aspects of the creation and dissemination of electronic information untreated. While regulations and court rulings have attempted to apply the principles of those laws to computer and telecommunication contexts, many observers (myself included) believe that we need to update and redefine those laws for our increasingly electronic federal information environment.

With these definitions and understandings in mind, let me return to the documentation of my assertion that current federal information policies are creating serious problems for the voluntary sector and the active citizenry.

HOW MOST OF THE VOLUNTARY SECTOR IS BEING INFORMATIONALLY DISENFRANCHISED

1. Importance of the American Voluntary Sector

Private, voluntary associations play a larger role in educational, social service, cultural, religious, and public affairs in the United States than in any other nation. Gale's Encyclopedia of Associations (1989) lists almost 21,000 national membership associations, divided into 18 major areas of activity, and over 50,000 regional and local associations. The Internal Revenue Service has over 300,000 organizations with incomes over $25,000 listed as tax-exempt charitable, educational, and service groups. If smaller non-profits are added, we have at least 500,000 voluntary organizations active in American local, state, regional, and national life.

When religious organizations and labor unions are included, about 80-90 million Americans belong to voluntary associations. According to a recent national survey by Independent Sector, some 80 million Americans gave an average of 4.7 hours per week or 244 hours per year to volunteer work in 1987. This is the equivalent of full-time work from 8.8

million employees, for a value of $150 billion in payroll. It is this powerful volunteer force in America that President George Bush and other governmental leaders have in mind when they talk about the need for and value of the "thousand points of light" in helping deal with our society's problems and opportunities.

(Incidentally, the Independent Sector survey reports that the American public in 1987 expressed more than twice as much confidence in charitable/voluntary organizations than it did in big business, organized labor, and Congress.)

Given the voluntary sector's historic and continuing role in our society, any government policy that threatens its effectiveness, and that of the 80 million citizens it mobilizes, weakens one of the most important positive forces in our national and local life. Yet this is just what federal information policies have done in the past 8-10 years.

2. Reference Point's Poll of Voluntary Sector Organizations, April, 1989

During 1988 and 1989, Reference Point met and discussed access-to-information issues with more than 150 diverse voluntary associations, from small community-based action groups to large national associations with annual budgets over $50 million. A common, persistent theme from a majority of these groups is that they are losing rather than gaining ground in their ability to know what information relevant to their work the Federal Government now has, what the content and format of such information is, and how to get to it efficiently at bearable costs.

To present this concern in the most useful form to the Subcommittee for its hearings, members of the Reference Point staff and I* conducted a telephone poll during the first two weeks of April, 1989, with staff members at 88 national voluntary associations.

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* Interviews were done by the following Reference Point staff or consultants: Anne Finger, John Harris, Brian Puckett, David Westin, and Ricardo St. Hilaire. Data analysis was performed by David Westin. Secretarial work on the poll was done by Hope A. Campbell. All organizations were promised anonymity for the reports and observations of the staff members.

This was not a statistically representative survey of national associations, which Reference Point plans to conduct later in 1989. However, it confirmed strongly what we had been hearing in our detailed conversations with voluntary sector staffs during 1988-89, and also paralleled findings from a General Accounting Office representative survey done in 1988, which I will report following our poll.

The Reference Point poll used two methods -- entries from Gale's Encyclopedia of Associations and contacts at organizations known to us -- in order to provide a pool of 88 respondents that would have the following characteristics:

-- would be broadly representative of the most relevant 15 of the 18 associational areas used by Gale;

-- would include conservative, liberal, and centrist organizations, to insure philosophical or ideological diversity;

-- would deliberately over-represent the larger and better organized associations, by selecting only organizations with 5 or more staff members, $100,000 or more in Annual Budgets, longevity of 5 or more years. This was to emphasize the experiences and views of the presumably more experienced, skilled and well-financed medium-to-large non profits, rather than newer, smaller, and less-well-financed groups, that could be expected to have more difficulty in locating and accessing federal data.

By subject area, as the Table on the following page shows, the 88 organizational respondents we spoke with were well distributed across the major areas of voluntary association activity.

Types of Non-Profit Organizations Polled by Reference Point on Use of Federal Agency Computerized Information, April, 1989 (Total = 88)

Type	Number
Social or human services	11
Economics, public policy, urban affairs	9
Health and medical	6
Business, trade, and professions	6
Religion, religious action	5
Governmental associations	5
Civil liberties, civil rights, women, minorities	5
Environmental	4
Science and technology	4
Research centers	4
Foreign policy, international	4
Education	4
Labor unions	3
Agriculture	3
Legal services or litigation	3
Ethics, governmental reform	3
Consumer affairs	2
Veterans	2
Cultural	2
Fraternal and social	2

As the Table indicates, we had 6 "business, trade, and professional associations" among the organizations we called. We did this to assure coverage of a very large and influential sector of the associational world (the largest single category in Gale's list of 18 areas of associational activity.)

However, responses from these organizations confirmed our prior judgment that such associations are almost always atypical of the majority of voluntary sector organizations. That is, the business and professional organizations usually reflect the nature, culture, and resources of the groups they represent. They tend to be highly automated in the management of their internal affairs, employers of technically trained information experts, creators of online databases of their own publications or of telecommunication networks (for E-mail, etc.), and active users of commercial and governmental gateway and database vending services. Thus, in our poll, they reported few problems with and heavy use of various federal computerized services. For this reason, we have generally dropped the responses of these associations from the reporting of our poll results, to concentrate on the 82 non-business and professional associations.

Several other characteristics of the associations we spoke with are worth noting, reflecting our focus on medium to larger sized and financed associations. Among our 82 non-business and non-professional organizations:

- 9% had been in existence 5-10 years; 43% for 11-25 years; and 48% for over 25 years.
- 10% had between 5-10 staff members; 28% had 10-25; 37% had 26-100; and 35% had staffs of over 100 persons.
- 11% had annual budgets of between $100,000-250,000; 14% between $251,000 and $500,000; 24% between $501,000 and $1 million; and 41% over $1 million.

How did these organizations report their experiences with and judgments about access to federal public information in general, and to computerized data in particular?*

1. A Majority Feel Public Access Has Worsened in the 1980's

First, a majority of the organizations in existence in the 1970's and before (94%) report that, overall, they were better off in locating and obtaining federal information before the 1980's than they feel they are now! They cite a combination of five factors:

A. Generous and adequate printed materials were regularly issued and were readily available to them, either directly or through libraries;

B. Adequately-designed directories and indexes helped them locate the printed materials they sought;

C. Where materials were not readily described, agency staffs were positive and helpful in locating and providing information to them, and those associations with good Congressional contacts received strong assistance from Congressional aides when a final push was needed;

D. Their own research staffs were adequate and travel time and costs to acquire federal information were not prohibitive; and

E. There was less pressure on them to get information in a hurry for research and/or representational purposes.

Now, these organizations report, each of the five supportive factors has changed significantly:

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* Because our poll was not a representative survey, we will generally use terms such as "a majority," "a large majority, "a small minority," and similar descriptions, and not supply numerical percentages. For some questions of particular relevance to use of computerized data, however, we will mention percentages in presenting the patterns of response. This is because indicating the size of very large majorities or very small minorities in those questions will communicate the strength of common experiences or viewpoints among the kinds of associations we called.

A. Many important publications are either not being issued in hard copies or have become difficult or costly to obtain. "It used to be easy to get and stay on the mailing lists of agencies and to keep up regularly with their reports. Now, it is a hassle..."

B. As important bodies of federal trend data, program reports, and research findings have been computerized, the creation and issuance of well-designed directories describing the content and availability of such electronic data has not kept pace. "We don't know what is there any more. It's become a game of 20 questions to find out where the information you want is located now."

C. Sharp cutbacks in agency public information staffs and in responsiveness to voluntary-sector informational inquiries has, as one human services agency put it, "greatly lessened our ability to locate what we need, if it isn't a regularly issued report or tape." (Those organizations in Washington report that Congressional staffs remain a major resource for them in getting to at least some of the agency information that they need.)

D. The high cost of staff labor and of travel onsite to libraries or federal dissemination offices has cut back on organizational resources for information searching. Yet, as we will see, most voluntary sector organizations have not -- as businesses and law firms have done -- reorganized their staff and publications budgetting to acquire and use computerized tapes or disks or utilize online searching of databases.

E. Finally, almost all these organizations report they are under greater pressure to acquire federal information faster, because the pace of their research and representation efforts has quickened so greatly. "What used to be scheduled for six months is now a one-month deadline," a staffer remarked, "and the one month stuff has to be done early next week."

Overarching this shift from basically favorable to unfavorable access of these groups to federal information is a paradoxical condition reported by many of these voluntary association staffers -- both too much and too little federal public information.

(1) In some areas important to these associations, they report that they know a great deal more federal public information is being generated in the 1980's, especially in electronic formats; but a majority of these associations feel themselves unable to locate and/or acquire as much of this new output as they would like.

(2) In other areas, however, these organizations report that federal agencies in the "cut-back 1980's" are collecting or disseminating less of the evaluative data about effects of program operations, regulatory inspections and rule compliance, and agency cost-effectiveness that these groups need to track and judge federal performance. Interestingly, this complaint is heard not only from liberal and regulatory-oriented associations but also from some conservatives interested in tracking the "fraud, waste, and abuse" issues more closely.

2. A very large majority are not using online federal information, and will not be able to use it soon unless new federal policies are adopted and better facilitative mechanisms are provided.

A very large majority of the 82 non-business and non-professional associations (83%) report that they are not currently using online federal data. About a third (31%) say they are obtaining and using federal computerized data on tape, floppy disks, or other electronic storage media.

When asked the single most important reason why they were not using federal online data, the association replies were as follows:

Not aware of what is available	40%
Too expensive	30
Don't have necessary equipment or experts	14
No need for it in their work	16

When the non-using 83% were asked if they would use federal online information relevant to their activities if it were adequately described and available at non-commercial rates, 68% of the non-users said "yes" and 32% said "no" or "not sure."

And, of the 17% of current voluntary association users of federal online data, 88% said they would make greater use of such federal online information if it was available at non-commercial rates.

Both current non-users and users attacked the high cost of accessing federal government databases through commercial online services. Some of these comments were sharp and angry:

- "We are spending a fortune using Dialog and Lexis/Nexis for a major study of life for Black and Hispanic males -- employment, mental health, marital status, education, incarceration, physical health, etc. Much of what we are paying these rates to get is federal and state information produced at taxpayer expense. The number of non-profits that are as large and as well-endowed as we are is very small, so much so that smaller organizations these days can't even think about undertaking such studies, even though they have excellent ideas and people to do this. This has become a rich person's game."
- "Much of the government information we need is just financially out of reach, and we just have to forget doing important research. It's incredibly pathetic in a democracy. As information becomes more complex, and it is vital to be able to get it as quickly as possible, the present situation just leaves the non-profit sector in the dust."
- "The bottom line is always money [even for a large conservative research organization such as ours.] The federal government used to sponsor classes for free on online searching. The Census Bureau would give free classes for librarians on how to use their data and statistics. Now, the classes are in the $100 to $200 range. We'd like to have the electronic version of the Federal Register but we had to abandon even the hard copy version when the Reagan Administration raised the price from $75 to $300."
- "We've tried to use the Federal Assistance Program Retrieval Service (FAPRS) for 11 years, but it stinks. It's very poorly designed, almost impossible to search, outdated, and I don't think it's complete. When you call on the phone, there's nobody to help. And it's not cheap! We also use a commercial version of the Federal Register, but it is very expensive. This should be offered either free or at non-profit rates by the Federal Government. It's not just us [as a national association] that's struggling. It's thousands of organizations across the country who are trying to get information to revitalize their

neighborhoods, and need federal data on affordable housing, job creation groups, etc."

We then asked the entire group what developments-- apart from lower-cost usage -- they would need to enable them to make effective use of relevant online federal public information. Four measures were cited by most of the organizations:

- A user-friendly, multi-agency Directory of what is available;
- Better formats and search software for locating the needed information in large files;
- More timely, up-to-date information than many agencies now provide in their online offerings; and
- Effective training and guidance in using online data, provided either by governmental or private sources.

a. The need for a multi-agency, multi-topical Directory.

Reflecting earlier explanations of non-users that they didn't know what was available, the need for a directory was voiced again and again by the association research directors and information staffers with whom we talked:

- "We need better information on federal grants in the arts, humanities, and UN activities. But, we first need a publication or service to list these sources and tell us how to use them."
- "We would use online federal data a lot if it was well-described, reasonably easy to access, and affordable. People like ourselves don't know where to find these resources."
- "We know there is a wealth of information there, but we can't get to it with what the government now releases about what it has."
- "Keeping up to date with federal regulatory actions is getting harder and harder without online access, but we can't afford the commercial services and we're not sure where to try to get this directly."
- "Non-profits should have their own network and guide for getting, organizing, and using federal electronic information. It's foolish to expect the commercial services to provide us with what we need at prices we can afford to pay."

3. The 1988 GAO Survey of National Association Use of Federal Public Information

Independent and statistically representative confirmation of many of the conditions found by our poll , as well as important additional insights into voluntary association experiences and desires as to federal information, appears in the results of a 1988 General Accounting Office (GAO) survey of federal information use by a sample drawn from eight Gale categories of national associations. (Federal Information: Users' Current and Future Technology Needs, GAO/GGD-89-20FS, November 1988.)

Compared to the Reference Point poll, the GAO sample included more associations with less than 50 staff members (76.9% in the GAO sample to 50% in our sample), and probably more associations with annual budgets of less than $100,000 (though GAO did not obtain such budget data). The GAO sample included business, trade, and professional associations, but did not include scientific and technical associations, which were the subject of a separate GAO user survey.

GAO's survey examined what types of federal information non-profit organizations sought most often. The 12 areas of federal information most used by these associations (out of 41 topics specified) were:

Laws/regulations	40.5%
Demographics/vital statistics/census information	36.4
Education	30.6
Health/nuitrition	28.9
Environment	22.1
Colleges/universities	21.4
Labor issues	20.2
Taxes	20.2
Economics	19.7
Social programs	19.1
Consumer information/product safety	18.5
Foreign affairs	17.9

When asked the sources of federal information used most frequently, libraries scored quite low (the largest combined "very often" or "often" rating of assocation use was college and university libraries, at 11.5%.) The most often used source was the media, with a high 60.1% for newspapers and the lowest in the media group radio and television, at 42.7%. Various publications were obtained directly from the Federal Government in a range of 17 to 37%. About 12% of associations reported they used commercial mail and telephone ordering of publications often or very often. Against this background, only 6.9% of national associations reported that they had used electronic online database vendors very often or often during the past 12 months. Adding the "occasionally" category increased such use to 18.5%.

The GAO sample was asked what formats they presently get 15 listed types of federal information in, from either federal or non-federal sources, and then in what formats they would like to get federal information "in the next 3 years." The two sets of answers relating to the 6 highest present uses of "online data base" and to associations desires to have online formats 3 years from now are as follows:

Federal information	Now get online	Want online in 3 Years
Scientific and technical	5.2%	8.1
Congressional record/hearings/repts/bills	4.6	16.8
Laws/statutes	4.6	13.9
Statistical data	4.0	17.0
Agency rules/regs/admin. decisions	3.5	12.1
Agency decisions/opinions	2.9	12.7
[Press releases]	0.6	9.8

These figures show that voluntary associations get online data base information that primarily covers federal government operations (4 of the 6 highest listed). When it comes to what these assocations told GAO they want to get online in the next 3 years, 5 of the top 6 listed involve government operations, with press releases moving ahead of scientific and technical information.

Turning to the kind of federal information that associations feel would be useful to have online, and ignoring whether they now have the necessary equipment, respondents replied to seven items provided by GAO. Paralleling Reference Point's poll, the highest ranked item was

"Comprehensive index to federal information." The second highest was "Integrated database of key statistical series (e.g. statistics on energy, environment, agriculture, population)." These were preferred over the Federal Register, Congressional Record, Agency Reports, Agency Press releases, etc.

When asked what they would be willing to pay in hourly use fees to have each of the seven federal information items listed, the "Comprehensive index to federal information" scored highest in the $1-9 an hour and the $10-24 an hour range. However, this is far below what current commercial services charge per hour for access to existing federal databases that they vend. (These are usually in the $50 to $125 per hour range.)

4. The Harmful Impact of Current Federal Information Access Realities on Voluntary Sector Organizations

Does the current adverse condition of voluntary sector access to federal data, especially computerized and online data, make any difference to the public interest, or to the operations of our democratic society? A majority of the organizations that Reference Point polled are convinced that it does make a difference -- and that the difference is all bad. Associational staff members report that:

- **Important research studies into social problems are not being undertaken;**
- **Testimony before Congressional committees is not as well-documented as it should and could be;**
- **Human and social service agencies are not able to connect their clients efficiently to needed available services;**
- **Violations of federal regulatory laws and regulations cannot be tracked and publicized as closely as needed by watchdog groups;**
- **Evaluations of costly federal programs and of agency administration**

of these are suffering because the proper indicators are not being collected or combined with other federal data to provide adequate analysis;

- **Comparatively, the non-business associations are losing ground to the technologically-sophisticated business associations in obtaining and applying federal trend, regulatory, and program data in public policy debates.**

Summing up these impacts, the research director of one agency said

- **"It is the quality of well-informed and rational public discourse that suffers. Public interest groups have to speculate and shout more because they can't get the data on which to make documented analyses and more fine-tuned judgments."**

Referring to the growing gap between federal information haves and have-nots, the director of a mental health organization reflected:

- **"Obtaining access to federal information has never been a level playing field. But now, it's getting less level all the time."**

To return to the theme with which I opened my testimony, the day of the Information Lords and the Information Peasants looms ahead, if we do not correct this deepening inequity through effective governmental policies and private efforts.

WHY HAS THIS DANGEROUS SITUATION DEVELOPED?

The response to the question, "Why has this dangerous situation developed," can be illuminated by some recent history.

In 1973, I conducted the first "impact study" of the ways that federal applications of computer technology were affecting public access to federal information available under government policies and the existing Freedom of Information Act. (This was just before the important 1974 Amendments to FOIA.) This was first published in 1974 (Alan F. Westin, "The Technology of Secrecy," in Dorsen and Gillers (eds.), None of Your Business: Government Secrecy in America, N.Y. Viking, 1974) and in another version in 1978 (Alan F. Westin, "Computers and the Public's Right of Access to Government Information," in Yovitz (ed.), Advances in Computers, Volume 17, N.Y., Academic Press, 1978).

To learn whether the move to automated files and procedures had made it easier, harder, or was having no significant effect on compliance with existing law, I gathered data from two groups. The first was information-holders -- twenty-eight federal bureaus, agencies, or departments. The second was information-seekers -- thirty-five groups that regularly attempt to obtain information from government agencies. The latter included five categories: General Counsel to Congressional committees; public interest law firms and research organizations; "guardian groups" (civil rights, civil liberties, consumer interest, women's rights); freedom of information committees of media associations; and investigative writers.

Of the twenty-three federal agencies that responded, four-fifths stated that their computerization of files subject to public access had aided rather than impeded compliance with freedom of information laws. In part, this response was related to the broad definition of "public claimants" I had used in my survey. It encompassed individuals or organizations seeking access to their own files or those relating to claims they were pressing; members of the press seeking access for investigative purposes; Congressional committees requesting information; scholars doing studies of government policies; and officials of business, public interest, consumer, or other civic groups looking into government policies and programs.

The reporting agencies provided concrete examples where improvements in data production and handling through computerization were resulting in better distribution of data to each of the five information-seeking groups about which I had asked.

Far from challenging this judgment, the five groups of information-seekers generally agreed with the estimates of federal executive officials, though they offered somewhat different judgments about how healthy the state of public access was at that time. Many of the information seekers stressed that the heart of the issue concerning access to information was policy, not computerization. It is important to note that the replies most in accord with the federal agency reports came from Congressional committees: the agencies have always spent considerable time answering such requests, and the committee respondents echoed the agencies' statements that computerization had enabled them to improve these services to Congress. A few public interest groups described instances in which computerized files enabled them to get information that would have been impossible to obtain from manual records. But most of the other information-seekers I queried reported either no experience with computerized files or no special problems with them.

It was apparent that the positive public-access effects of computerization up to 1973 had been serendipitous: the results were essentially unintended by-products of the primary agency goals of improving data services to clients and management. Improving the production of information to other parties, such as the press or public interest groups investigating government operations, was not a goal of computerization.

I concluded in 1973 that although I did not believe there had been a significant lessening of public access to government information as a result of automation, I did believe there were lost opportunities and potentially great dangers for the future if public access to automated data was not addressed directly. I thought then that three key players were not yet fulfilling their roles in this unfolding area:

1. Congress has not yet realized how vitally important it is in the electronic era for information to be collected and disseminated in ways that protect the public interest. It would therefore become essential for Congress, in its appropriation and authorization processes, to mandate that agencies consider and provide for public access when designing or expanding their computer systems. Congress also needed to provide funds for innovative public-outreach programs by agencies.

2. The Executive Branch -- essentially the White House and OBM -- had to address and define requirements for public access in supervising the computerization programs of federal agencies. Not having such requirements -- and supervising their implementation -- would signal agencies that public access was not to be a part of agency policy and spending priorities in creating automated information systems.

3. Clearly, the public interest groups and others in the voluntary sector -- a vital element in the balance of power in our democracy -- had not yet appreciated what computer technology might do -- or not do -- to public access.. Therefore, they had not yet organized to make certain that the process of computerization was carried out with considerations of public access at the forefront. I spoke at that time of the need for a catalytic force to begin that organizing process.

I believe these three shortcomings of the 1970's -- which were not harmful to public access at that time, because of the limited reliance on computerized data and the limited presence of online systems -- have continued in the 1980's and produced the current, dangerous situation described in my testimony:

1. Apart from the important precedent-creating action of Congress in mandating community access to toxic release data collected by the Environmental Protection Agency, Congress has not mandated meaningful public access to computerized data either in other specific program areas or as a general supervised requirement of federal information technology applications.

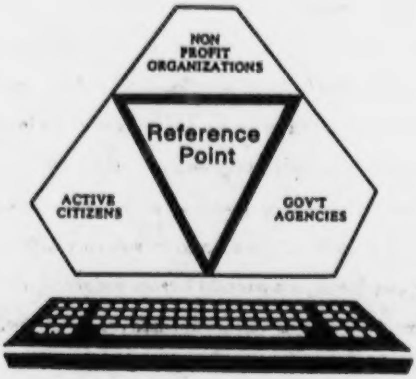
2. The Executive Branch and OMB have, through application of budget cutbacks, deliberate shrinkage of the public-information function in federal agencies, and promotion of the OMB A-130 "privitization" policy failed to address the interests of the voluntary sector and the general citizenry in obtaining affordable, practical access to the gropwing storehouse of federal electronic data.

3. Until recently, the voluntary sector has not recognized what was happening and organized itself to seek remedial measures. That is now changing.

Recently (April 10, 1989), almost 50 voluntary sector groups called for reconsideration and redefinition of OMB's Circular A-130 on policies for dissemination of federal electronic information, as well as rewriting of the Federal Paperwork Reduction Act of 1980 when it comes before Congress this year for reauthorization. An emerging voluntary-sector "Right To Know" coalition will also be pressing Congress to update the Freedom of Information Act to encompass electronic information issues, and to draft provisions to insure voluntary-sector access opportunities to computerized data.

The creation of the Reference Point Foundation as an organizing, advocacy, and facilitative mechanism for improved voluntary sector and citizen access to federal public information marks an even more comprehensive action, one to which I will now turn.

THE REFERENCE POINT CONCEPT



REFERENCE POINT: A NON-PROFIT PROGRAM FOR ORGANIZING, DESCRIBING, AND DISSEMINATING PUBLIC INFORMATION THROUGH ADVANCED INFORMATION TECHNOLOGY

1. Reference Point's Overall Program

Reference Point began as an idea in 1983, was created as a legal entity in 1987, developed the working model of its videotex-based public online information system in 1986-88, and presented its concept and model to almost 100 voluntary sector organizations in 1988, all accomplished with funds from the private sector.

Reference Point is now embarked on a major, five-year program to see that the voluntary sector and the citizenry are not left behind as business and government employ advanced information technology to carry out their operations. (Reference Point's formation, goals, program, staff, and advisors are described in the Attachment to this Testimony, and this will not be repeated in detail here.)

Essentially, Reference Point has three goals for its system:

1. To enable the 500,000 local, state, and national voluntary sector organizations to describe their information, services, and resources in an online information system utilizing a multi-topic Master Subject Index; provide Abstracts of information materials; and disseminate the content of such materials to Reference Point users in a variety of formats (online reading, printout, mailed hard-copy, disk, etc.). This goal also includes connecting voluntary sector organizations for information-locating and communication purposes with other voluntary sector groups, especially those not in the same field and with whom informal networking is not presently available.
2. To acquire, catalog, format, and disseminate information of federal, state, and local government agencies of importance to the voluntary sector and the citizenry, through user-friendly and powerful location and search routines and at low, non-commercial rates, as well as subsidized use for low-income public-interest

users.

3. To lead a "public access" and "educational" campaign to connect both voluntary association active members and individual citizens to the online directory and clearinghouse of voluntary sector and government information collected through activities 1 and 2 above. In addition to offering use of Reference Point to persons and families with home computers (presently in about 20 million households and 15 million of these with modems for connection to online systems), Reference Point will promote citizen use of its public information system through terminals in public and university libraries, neighborhood centers (youth, senior citizens, etc.), government offices, and other public-access sites.

This is a large-scale, ambitious, and state-of-the-art program, and it will take five years to move from current working model and mobilization activities to operating national system. Large funding, extensive active participation by voluntary sector leaders and staffs, high user-involvement in design and refinement, major national educational, training, and support efforts, and close private-public cooperation will all be necessary.

If the voluntary sector and citizens are not to be severely disadvantaged by our move into an information-rich and data-dependent social system, however, we are convinced that such an ambitious, cooperative effort must be undertaken.

2. Reference Point's Program for Facilitating Access to Federal Public Information

In extensive talks with directors and staff members of major federal agencies collecting and disseminating public information via electronic technology, we found the great majority of them ready -- even anxious -- to improve the reach of their public dissemination efforts. Their key problems were a lack of:

- Strong, enforced mandates by Executive authorities or the Congress to pursue better outreach;

- Adequate funds and staff to carry out such dissemination policies; and
- Non-governmental information distributors interested in disseminating their data if there is not a viable commercial market of users for that information.
- Non-governmental information distributors ready to disseminate federal automated data to non-profit organizations needing it but unable to pay existing, high commercial rates for such access.

Reference Point starts, then, with the assumption that there is a genuine readiness among most federal agency officials to fulfill their information dissemination goals and public-access responsibilities more effectively, and to satisfy voluntary sector needs, if there were an appropriate and effective instrument to fulfill those objectives. Providing such a facility is Reference Point's purpose.

3. Reference Point's Federal Information Dissemination Project, 1989-91

Having researched thoroughly what the great majority of non-business voluntary sector organizations need and want, Reference Point's federal information dissemination project for 1989-91 will do the following:

A. Create and Keep Up to Date an Online Directory of Federal Computerized Information.

This will be initiated by taking the title-listing directory of federal databases just compiled by OMB and the more detailed directories of databases available from some individual federal agencies and entering these into the Reference Point system, using our master topical classification system (thereby creating uniform and multi-agency search capacities). These entries will then be sent to the individual agencies for additional elaboration and description, and will be kept up to date on a regular basis. Users of Reference Point will thus have an up-to-date, classified, and described directory of federal information, indicating what databases are present, what is in them, how the information is formatted, where it can be obtained, the cost of acquisition, and similar important information.

B. Acquire and Disseminate at Non-Commercial Rates and in User-Friendly Formats Federal Databases of Importance to the Voluntary Sector

Through its meetings with voluntary sector organizations, Reference Point has identified certain federal databases of high importance to these organizations but currently out of reach or able to be only partially used because of high commercial use rates. Examples are the Federal Register and the ERIC (educational research) databases. Reference Point will buy the tapes of these databases from the federal agencies, format them for the interests of voluntary sector organizations (through Advisory Committees of users and information-system experts), and disseminate them at low, non-commercial rates.

C. Create a National Freedom of Information Computerized Forum

This Forum will be a focal point for the exchange of information, experiences, and ideas about expanding public access to public information. Participants will be voluntary sector organizations active in using state and federal FOIA laws; academic and legal experts interested in this area; reporters and editors; FOIA officers in state and federal agencies; and similar parties. The Forum will build up a comprehensive directory and abstract library of FOIA laws; regulations; user and claimant experiences; proposals for amended or new FOIA laws and practices; and other primary materials.

In the interests of time and space, I will not develop in detail the ways in which these efforts will be pursued in modular steps, the unique information-handling and inter-active commentary features they will offer to users, and the user-participation and education/training components attached to each stage. These will be fully described in later publications.

What is of central importance is that there is now developing a national, non-profit foundation dedicated to improving the description, classifying, abstracting, and dissemination of federal information, for the primary use of voluntary sector organizations, their members, and the citizenry, at non-commercial rates and with user-friendly, user-supported location and search procedures.

SUMMING UP

To return to the theme at the beginning of my testimony, I believe the topic that the Subcommittee is exploring in these hearings involves nothing less than the direction and quality of our governmental and social processes in the next decade, and beyond that, in the early 21st century.

Without deliberate or malicious intention, I believe federal policies and practices are slowly but surely producing an informational disenfranchment of most non-business voluntary sector organizations and the millions of citizens and communities they serve.

As I have shown, this is not an inevitable by-product of adopting information technology in federal agency operations. It is the result of effects not foreseen and opportunities for enhancing public access not taken.

To be sure, information dissemination issues also involve larger political questions, and we cannot avoid debating and deciding those larger issues by invoking the general principle of maximum public access to federal public information, whether on 3 by 5 cards or in online databases.

What the American public has a right to expect from Congress, and from this Subcommittee, is serious attention to this profound matter, updating of federal laws and regulations to encompass access rights in the electronic environment, and mandating of responsive and responsible system efforts by federal agencies that have built up and are entrusted by voters and taxpayers with the common storehouse of public information on which the whole nation and its democratic future depend.

Reference Point will do its part in assisting the clarification of these issues, the identification of wise policy responses, and the provision of a new, non-profit information clearinghouse to facilitate voluntary-sector and citizen access rights.

Reference Point

an online public interest directory and information service for the non-profit sector and the active citizenry

APRIL, 1989

REFERENCE POINT

an online public interest directory and information service for the non-profit sector and the active citizenry

This booklet describes REFERENCE POINT – a combination of new information technologies and new organizational action designed to strengthen the effectiveness of America's non-profit organizations and information-oriented citizens.

WHY THE VOLUNTARY SECTOR NEEDS AN ONLINE PUBLIC INTEREST DIRECTORY AND INFORMATION SERVICE

Our democracy has long depended upon a balance of power among three segments of American society: business; government; and the voluntary sector. However, as we move more deeply into the electronic age, this balance of power is being seriously challenged. While business and government are heavily engaged in the creation, exchange, and use of electronic information to enhance their effectiveness, the voluntary sector has not yet acquired the skills, technological expertise, and resources to keep up.

Major Changes in Information Use

- Over the past two decades, significant changes have taken place in the way information is used in our society. Access to more complex and time-sensitive information is becoming essential in order to conduct business, manage government, and keep up with social, economic, and political affairs. And, more and more of this information today is being stored *primarily* in electronic form. Some experts predict that by the year 2000, most trend and reference information will be available on a timely basis only to those with the electronic capability and know-how to retrieve it.

- Federal, state, and local governments produce, gather, and distribute much of this important information for public use — at taxpayer expense. But computerization of information requires new approaches and distribution channels to insure public access. Unfortunately, government has yet to establish the necessary regulations, procedures, and budgetary allocations to accomplish this vital goal. At present, government's information (in fact, all public interest information) is randomly organized, rarely cataloged, and difficult to locate and access.

The Voluntary Sector Is Lagging

- To the extent that the voluntary sector is using new information technology at all, it is primarily for internal organizational purposes, such as administration and mailing lists. While there has been valuable activity and experimentation with electronic mail and other information services, a study of Gale's Encyclopedia of Associations showed that less than 2% of the 21,000 national voluntary associations listed are either creating computerized databases or using online networks.

- Without access to electronic information and communications, voluntary organizations are losing ground in their ability to perform critical functions: to obtain the information necessary for their work; to monitor the operations of government effectively; to disseminate their views and publications to others; and to network effectively with organizations in their fields of specialty. They are not positioned to develop new services and extend their outreach.

- Yet this is a time when the voluntary sector is being asked to do more, and to function more effectively. President Bush, with his service to America concept, and government leaders at all levels are looking to the voluntary sector to supplement government efforts and play a greater role in feeding the hungry, housing the homeless, and confronting other very difficult problems that we face as a society.

THE INFORMATION NEEDS OF INDIVIDUAL CITIZENS ARE ALSO BEING NEGLECTED

For individual citizens, information technology offers far greater promise than it currently delivers.

- Millions of citizens engaged in voluntary activities also have computers in their homes, many already equipped with modems for using online information systems. If there were a user-friendly, moderately priced national information system through which participating voluntary sector organizations could inform their active members of news and events, seek their opinions on policy issues, and sign up volunteers for important local or national assignments, the efficiency and reach of volunteer efforts could be significantly increased. And, once such a prime link to valued organizational participation were in place, additional millions of individuals would have a reason to access online information through computers they buy for their homes or use in public locations.

- Both citizens active in volunteer work and millions more who are not organizational activists share a need for important personal information that has not yet been supplied by commercial information services. Though commercial information services such as Compuserve and The Source are providing home computer owners with instantaneous airline reservations, stock quotations, and sports results, they are not yet bringing people information of even greater value — vital information from government and non-profit providers concerning personal health, regulatory data on consumer-service providers, environmental protection data, career possibilities, and other information tailored to the exact need-of-the-moment for individuals and families.

BOTH THE VOLUNTARY SECTOR AND INDIVIDUAL CITIZENS NEED BETTER MEANS TO LOCATE VITAL INFORMATION

In addition to inadequate dissemination, this information is being improperly cataloged. Thus, millions of dollars' worth of public education services and materials are going unused because the people who need them do not know about them. Libraries have been struggling to maintain existing cataloging efforts, while faced with the increased demands of electronic information. While government has the technology and financial resources to improve its cataloging, the non-profit sector must be assisted in such efforts.

REFERENCE POINT WAS CREATED TO ADDRESS THESE PROBLEMS

These needs of the voluntary sector and information-oriented citizens call for a unique new organization—one that combines research, education, advocacy, information-systems development, and large-scale multi-media operations. Reference Point was created to carry out just those functions. It is a non-profit, nonpartisan organization run by and for the non-profit sector.

Reference Point's program includes the following activities:

- **Creation of a centrally coordinated computer facility** for disseminating major government databases at costs far below what the commercial sector now charges. This facility will also be used for designing and implementing conventional and unique information service concepts for public information, and for enabling non-profits to begin implementing sophisticated information systems with a centralized pool of computer and software experts, programmers, operators, and managers. Innovations or benefits accruing to any user or project will be available to all others.

- **Development of a computerized clearinghouse** for cataloging and disseminating public information, with a variety of systems and missions. The common primary thread running through all of them is Reference Point's role in assisting information providers to catalogue their information more effectively prior to or at the time of its actual dissemination. Once an information item is properly described in a computerized system, a wide variety of dissemination and communications-based interactions becomes possible.

- **Development of a nationwide, multi-disciplinary electronic directory** of information, expertise, and services — a directory where the information provider, and not a third party, is responsible for maintaining (with Reference Point's assistance) the records and classifications that describe the information or service. This interactive directory will permit users to locate or access — via computer terminal — the services, publications, products, and ideas of non-profits, government agencies, university research centers, and other important resources. It will also permit information to be disseminated to described organizations and individuals in an online interactive manner that is consistent with the power and promise of computer technology. The directory is being designed for distribution on virtually all major electronic channels that service government and public institutions, the voluntary sector, the commercial sector, and the public at large. But its contents will also be convertible to print and other formats on demand. Thus, libraries, schools, and human service and referral establishments will be able to furnish hard-copy to the public whenever required.

Easy, Low-Cost Accessibility

The Reference Point systems will be accessible to anyone with a computer and a telephone modem — in home, office, or any of a number of public access locations, such as government offices, public libraries, schools health and human services facilities, community centers, senior citizens centers, etc. The systems will be easy for first-time users to understand and operate, though they will also have a command level interface to meet the more complex demands of experienced users.

Educational and Public Advocacy Roles

Through conferences, seminars, newsletters, articles, and a series of model information systems projects involving non-profit organizations and the public, Reference Point will educate and inspire its audience about the exciting potential of technological applications suited to their needs. Because meeting those needs must be the focus of any public interest information system, the Reference Point systems are being designed with continuing interaction with the user communities they are intended to serve.

Reference Point has already begun the process of testifying before governmental bodies on the importance of public access to government information, and has also begun drawing up model legislation. At the same time, Reference Point will demonstrate the practicality and power of such public access by obtaining government electronic information and providing it to voluntary organizations and the active citizenry in convenient formats and at affordable prices.

HOW REFERENCE POINT EVOLVED

The idea of a Reference Point began in response to concerns by leaders of voluntary organizations, social scientists, and experts in information science that the voluntary sector and citizenry must not be left behind in the era of increasingly electronic information.

- Dr. Alan F. Westin, Professor of Public Law and Government at Columbia University and now Reference Point's president, identified the need in the early 1970s. In one of the first empirical studies of how federal-agency use of computers was affecting public access rights, Professor Westin found that automation was not hindering public access as of 1973. But, in papers published in 1974 and 1978, he warned that the failure of public interest groups to become actively involved in the government's move to automate information and to develop new public dissemination rules and procedures for computer applications represented "lost opportunities" for the 1970s and "potentially great dangers" for the 1980s and 1990s.

At the same time, he warned, Congress and the state legislatures were not recognizing their crucial roles in setting public dissemination standards for computerizing executive and regulatory agencies. Unless legislatures made public access to computerized data a mandated duty, Westin said, the rush into computerization could lead to less rather than more public access to government data in the so-called "information age."

- While early recognition of the social need was growing, experts in information system design and technology applications began to conceive of ways to make automated public data truly locatable and accessible to the public and its representatives. In 1983, Reference Point's founders began a needs analysis and created the concept of a large-scale information clearinghouse. Between 1983 and 1986, they designed and implemented a variety of model systems and potential applications.

- To test these ideas and begin assembling the diverse talents needed to refine them, the Reference Point Foundation was created as a nonprofit Delaware corporation in 1987, with Dr. Alan F. Westin serving as president. It has applied to the Internal Revenue Service for 501 (c) 3 status as a tax-exempt educational organization.

Exploring the Concept with Key Groups and the User Communities

- **With Expert Advisors.** Opinions about the Reference Point concept were then sought from several dozen experts in telecommunications, information management, library administration, indexing and classification, and organizational sociology, as well as representatives from voluntary organizations in a wide range of subject areas and fields of interest. A strong consensus emerged that Reference Point represents an exciting concept, and that it is of vital importance to restoring the equilibrium between the informational capacities of the voluntary sector and those of business and government.

• **With Selected Non-Profit Organizations.** During the first half of 1988, Reference Point interviewed several non-profit groups through phone, mail, and personal visits to learn about the organizations' information needs and uses. Included in these initial contacts were the League of Women Voters of the United States, Boys Clubs of America, Association on American Indian Affairs, New Hampshire Clamshell Alliance, and the American Civil Liberties Union Privacy Project. Using a sample organizational profile prepared by Reference Point, each group provided a detailed profile of the organization and its services, a list of its publications, an abstract and sample page of a selected publication, and the names of experts available for speaking and consulting with other groups. All this information has been entered into the Reference Point system.

• **With Study Groups of Potential Users.** In the fall of 1988, participants from a cross-section of voluntary organizations learned about and saw a slide presentation of the capabilities and sample searches on the Reference Point system. Three groups were involved in this study: national non-profit organizations headquartered in New York City; national groups located in Washington, D.C.; and local and state non-profits in New Jersey. The latter group was joined by experts from New Jersey library systems, universities, and government.

Among the 70 diverse and representative organizations attending the User Meetings were groups such as these:

Washington, D.C.: American Council on Education, American Enterprise Institute for Public Policy Research, American Red Cross, American Society of International Law, Children's Defense Fund, Dance USA, Independent Sector, League of Women Voters of the United States, and United Way of America.

New York City: American Numismatic Society, Anti-Defamation League of B'nai B'rith, Association on American Indian Affairs, Boys Clubs of America, Cancer Care, Chamber Music America, National Association on Drug Abuse Problems, National Urban League, Rockefeller Archive Center, and Trilateral Commission.

New Jersey (Local /State): American Cancer Society (Bergen County unit), Environmental Research Foundation, New Jersey Network of Business and Professional Women, Planned Parenthood of Bergen County, Private Industry Council of Bergen County, and the United Labor Agency of Bergen County.

The meetings generated a great deal of interest and enthusiasm. Attendees agreed to prepare profiles of their organizations for entry into the system and to participate in a survey of the information patterns, uses, and needs of non-profits—a study that will also be an important contribution to the literature about non-profits.

• Many participants from these meetings volunteered their organizations to join Reference Point in constructing Model Information Systems to help the organizations create ways of using electronic information systems in conducting their internal and external affairs.

• Following the meetings, the Reference Point Advisory Committee, which had consisted of experts in law, social science, library science, and information technology, was expanded to include representatives from more than a dozen varied non-profit organizations. Advisory Committee members (listed at the end of this booklet) are providing valuable suggestions as

Reference Point's systems and organizational development progresses.

Survey of the Voluntary Sector's Needs for Government Information

Continuing work that had been started years earlier, Reference Point undertook in early 1989 an extensive survey to determine which existing government databases are of greatest interest to non-profit organizations, what information non-profits would like to have from government that is not currently available, and how much they are willing to pay. This survey will guide Reference Point in its acquisition of databases to offer to its members, as well as in its advocacy activities (see below).

Affiliation with Syracuse University School of Information Studies

Also in early 1989, Reference Point established an important relationship with the Syracuse University School of Information Studies, one of the nation's leading educational centers on the subject. The Syracuse program unites professors and degree programs in Library Science, Information Science, Information Policy, Information Resource Management, and Organizational Uses of Information Technology.

Syracuse will conduct evaluations of all Reference Point's organizational information programs; test and improve the user-friendliness of the system's search routines; and develop innovative education programs in cooperation with Reference Point.

Support for Public Access to Information

Encouraging and facilitating greater public access to government information is at the very core of Reference Point's mission. At the same time that Reference Point is developing technical applications toward this goal, the organization has begun the vital process of articulating the public policy issues raised by electronic information.

- **State Legislative Testimony.** Dr. Westin testified for Reference Point in January of 1989 before the Joint Committee on Information Technology Resources of the Florida Legislature, at public hearings on "The State's Information Policy in an Electronic Age."

- **Drafting Model Legislation.** In March of 1989, the Individual Rights Committee of the New Jersey Bar Association, after hearing a presentation by Dr. Westin, invited Reference Point to draft a Model Electronic Age Public Access and Personal Privacy Law. Reference Point agreed to organize a pro bono National Task Force of experts in FOIA law and practice and Privacy law and practice to draft such a model law, and to include in the Task Force work specialists from business, labor, civil liberties, public interest groups, the library and information science communities, the print and broadcast media, the computer and telecommunications community, and government executive agencies and legislative committees at all levels.It is anticipated that such proposed legislation will be introduced in the New Jersey Legislature. It could also serve as a model bill for other states, and contribute to development of the "next generation" of federal Freedom of Information and Privacy legislation.

- **Congressional Testimony.** Reference Point has also received invitations to testify before various House and Senate committees holding hearings in 1989 on federal information policies. The issues to be covered include federal dissemination policies for computerized data, the needs of non-profit organizations and public interest groups for better access to government information, and updating of freedom of information law and regulations to respond to the new opportunities and problems created by the move of federal agencies to collect, store, and distribute much of their information in computerized formats.

- **Contacts With State and Federal Executive Agencies.** Reference Point's research to date has shown that many government agencies are eager for a facilitator to help them get their information to the public. Other agencies feel they need a mandate from the executive and legislative branches to pursue such outreach policies, accompanied by sufficient budgets to carry out that mandate. And some agencies will require legal direction and enforcement of rules to insure that voluntary groups and citizens can get the information that is public under law and paid for by the taxpayers.

THE REFERENCE POINT ORGANIZATION

To carry out this ambitious program, Reference Point operates through two closely coordinated mechanisms.

- **Reference Point Foundation** (RPF) conducts research, education, and advocacy activities. RPF was formed to survey the factors that lead non-profit organizations to create and use online technology; study emerging innovative programs by local, state, and federal agencies to offer online data for public use; prepare testimony and model legislation to insure public access to government computerized data; and conduct national conferences and publish books and newsletters to promote voluntary sector and active citizen use of online public information.

The Reference Point Foundation's Organizing Staff, Board of Directors, and National Advisory Committee are comprised of experts in the social uses of computers, information technology, library science, freedom of information, and a wide range of voluntary sector activities. (A brief biography of Dr. Alan F. Westin and listings of Foundation staff, directors, and advisors appear at the end of this booklet.)

- **Reference Point Network** (RPN) is the system-development, database-management, and operating arm of our program. This work is conducted for Reference Point by Knowledge Systems Inc. (KSI) of Chantilly, Virginia. KSI has extensive experience in large-scale online system management. (Its president was in charge of technical development for a pioneering online consumer information service called The Source.) KSI principals developed the software on which the Reference Point Model Systems are based. (A corporate profile of KSI is included, accompanied by brief biographies of Jeff Entwisle, its chief executive, and Matt Edelstein, principal designer of the Reference Point systems.)

As previously noted, Syracuse University's School of Information Studies is serving as Reference Point's evaluation source and academic base. (Information about the School of Information Studies faculty is also included in this booklet.)

REFERENCE POINT'S FIVE-YEAR PLAN

In late 1988 and early 1989, Reference Point formulated a two-stage, five-year development plan, based upon its consultations with representatives at the User Study Meetings, surveys of non-profit leaders, discussions with computer experts and government officials, and recommendations made by both the Syracuse University School of Information Studies and Reference Point's systems development consultants.

Stage One: 1989-1990

IMPLEMENTING STRATEGIC INITIAL SERVICES

In Stage One, Reference Point will pursue the following programs to further the use of current technology by non-profits and the public:

- **Government Database Dissemination.** Reference Point will acquire, link with, or distribute — at affordable prices — important federal and state government databases needed by many public interest communities and the federal depository libraries. Among these will be a daily edition of the Federal Register and several important educational, health, and consumer-related databases.

- **Voluntary Sector Database Dissemination** Reference Point will acquire, link with, distribute, and develop important voluntary sector databases needed by the same communities and many others. One goal of these projects will be to demonstrate that many existing databases may be more broadly disseminated than they are now. Another goal will be to demonstrate to potential database producers in the voluntary sector that database projects may be created at moderate expense of time, effort, and resources. Many non-profits already collect and process vast amounts of vital information. RPN will assist them in disseminating it with maximum effectiveness and at minimal cost.

- **Directory of Federal Information.** Reference Point will implement a carefully detailed program to consolidate existing, but disorganized, descriptions of recurring federal information products and collection forms. These "basic" records will have great value in themselves, but they will also become an important first step toward upgrading the quality of the description to meet a variety of access requirements for both the producing agency and the public.

- **Electronic Freedom of Information Conference.** Reference Point will implement an electronic "Freedom of Information" conference concerning any one or group of the described federal resources. This forum will facilitate the sharing of information about the needs, goals, and uses of the described agency, data or product among right-to-know advocates, the media, the library community, elected citizens groups, and the broad public and voluntary sectors. Access to the conferences of this FOI network will be generally available at the lowest possible cost.

- **Model Information Systems.** In cooperation with organizations such as the League of Women Voters of the United States, the Community Information Exchange of the National Urban Coalition, the American Civil Liberties Union, Boys Clubs of America, Research Center for Arts and Culture, and a number of other groups, Reference Point will design and implement Model Information Systems. These innovative systems will demonstrate the power and cost-effectiveness of online systems for internal and external organizational activities; help organizations disseminate their publications more widely; and help their staff and constituents network electronically with like-minded groups.

- **Enhance Existing Bulletin Boards and Create New Service Conferences.** Reference Point will provide a powerful mainframe facility for existing public interest bulletin boards, electronic conferences, and other public interest services. It will provide worthy projects with greater power, more sophisticated software, essential user and billing support, and national exposure, so that they are elevated from early-stage operations to sophisticated public interest

interest systems. RPN will also develop major conferencing systems of its own in cooperation with major public and voluntary organizations. Among them will be a National Drug Abuse Prevention Network, a Consumer Protection Network, and several other key projects that will be announced soon.

- **Public Mail System.** Reference Point will offer a variety of electronic mail, communications, and resource sharing services (e.g. purchasing pools) via its own dial-up computer facility, and via "gateway" to the rapidly expanding global network of public or commercial electronic networks and information services. While the system's electronic mail service may be used for an organization's internal use, it is primarily designed as a "Public Mail" system. The conventional type of service permits messages to be sent to any other member or user. The Public Mail System will permit senders to target mail by assembling mailing lists from appropriate categories in Reference Point's Member and Services Directory (described below). It will also organize messages received so that a recipient can quickly scan headers of the general subject of the message or message type in order to determine which messages are of greatest interest.

RESEARCH PROJECTS

•Survey of Current Government Information Dissemination Practices

Reference Point will conduct a major survey of existing governmental practices on the federal, state, and local levels with regard to access to electronic information. The entire study will be guided by Dr. Stephen Frantzich, Professor of Political Science at the U.S. Naval Academy. The state component will be conducted by Dean Donald Marchand at Syracuse, who is currently co-directing a study of information system planning and programs in the fifty states. A local-government study will be led by Kenneth Kraemer and John King at the University of California.

•Survey of the Information Patterns, Uses, and Needs of Non-Profits

Reference Point will make a detailed survey of the ways non-profit organizations currently use information, their perceived needs, and their stated goals. Exploring a terrain where little information currently exists, this survey will break new ground and make a significant contribution to the literature about non-profits. The survey is being conceived by Dr. Kenneth C. Laudon of the Graduate School of Business at New York University, and conducted by Dr. Wayne Parsons of Kane-Parsons, New York City.

During the first thirty months, Reference Point will also refine several key services (described below) for subsequent implementation. Much of the software for these services has already been developed, but will be tested during this period for Stage Two implementation.

Stage Two: 1991-1993

IMPLEMENTING INNOVATIVE SERVICES

The services to be implemented during Stage Two fall into three categories. The first consists of several path-breaking technological approaches to the collection, organization, and dissemination of information; they constitute the core modules of the Reference Point systems. The second includes innovative ways to join service delivery to unmet human needs. And the third involves stimulative "carrots" to encourage the voluntary sector to develop their own creative uses for information technology.

- **Member and Services Directory.** This will be the nucleus around which all other Reference Point services revolve. It will provide a national "reference point" for describing, locating, and disseminating information about and to the people, organizations, and resources that serve the public.

It will permit organizations and services to be located by both keyword-based free-language and a variety of traditional and novel classification schemes. The Directory will also function as an intelligent electronic mail directory, permitting users to locate prospective E-mail recipients by a host of criteria. Similarly, it will permit users of the network "Document Bibliography" (described next) to refine documents found by the author's or contributor's membership criteria.

- **Document Bibliography and Library.** This unique and powerful bibliography and library will permit users to locate citations, abstracts, and full text of publications that non-profits and government agencies wish to disseminate to others, free or for a fee. The library will also contain project reports, position papers, and other transient but important information that would not be available through normal library channels and is rarely cataloged by them.

Documents may be found by keyword in the citation, abstract, or full-text, by controlled or uncontrolled subject terms, or by various classifications such as document type, purpose, etc.. Users will be able to read documents at their terminals, print them out at their work stations, or order hard copy directly from the organizations or through Reference Point's Document Fulfillment Centers.

- **The Master Subject Index.** This is one of Reference Point's most exciting challenges, designed to simplify access to subject areas. Involving the nation's leading information scientists, experts on classification and computer indexing, librarians, etc., Reference Point will design a Master Subject Index that will permit users to locate even technical subject areas by popular names, jargon, synonyms, etc. Reference Point members will be able to contribute information to the system using their own classification terms. These terms will be linked to a master subject heading, so that the information will be accessible to inquirers through either the Reference Point heading or the contributor's own terms. Users who locate a subject of interest in the Master Subject Index will then be able to search the other Reference Point databases for relevant organizations, documents, etc.

- **Network Support Services: Sheltered Workshop-Based Data Entry and Document Fulfillment.** Reference Point plans to merge the information processing needs of the voluntary sector with the needs of one of the nation's most underutilized human resources: the disabled and disadvantaged.

The program will begin with two types of model sheltered workshops to equip and train employees to conduct much-needed work. The first will be devoted to data entry, text editing, and document scanning. The second will handle document fulfillment: the workshops will fill orders placed through the Reference Point System for voluntary sector organization publications, thereby relieving the organizations of a function many are not equipped to handle.

The goals of both programs are to perform important functions for the non-profit sector by increasing the level of sophistication, training, and effectiveness of the more than 2,500 existing sheltered workshops—thereby providing consistent and meaningful work for the workshops' current employees and creating new job opportunities for others.

- **Grants-in-Aid Program:** During its second stage of operations, Reference Point will initiate a Grants-in-Aid Program to encourage projects that apply online information to critical service needs of American society. Each of the non-profit organizations selected on the basis of detailed proposals will receive a cash award, plus a number of personal computers with modems, to put their projects into effect.

- **A Center for Information Technology**

In order to keep the non-profit sector and citizenry apprised of changes in the rapidly evolving world of technology, Syracuse University's School of Information Studies is prepared to collaborate with Reference Point in creating a National Center for Information Technology for the Voluntary Sector. This Center will provide courses and seminars to introduce MIS directors and information experts from the voluntary sector to the latest technology and applications. Reference Point will help develop the curricular materials and courses on using advanced information technology for public interest goals. The Center will serve as a national support network for the enhanced use of computers and telecommunications for non-profit organizations and citizens.

REFERENCE POINT'S TECHNICAL APPROACH

Although this booklet is not aimed at technical readers, it is important to explain the philosophy that is guiding the building of Reference Point's online information systems and the powerful classification system to facilitate user access.

- Information systems are continually evolving in a way that promises to make them more useful, efficient, and diverse. But to insure that this evolutionary process properly serves the broad public interest, the voluntary sector and citizens must be actively involved in systems development and implementation.

- The most practical approach for the kind of national information service envisioned by Reference Point's founders is to construct a system architecture that is centrally coordinated, but regionally and locally distributed. Rather than a fixed standard architecture, it will be flexible and conducive to development and direction from a variety of public interest perspectives and technological innovations.

- To maintain this flexibility, Reference Point will follow a parallel development strategy in implementing its key services.

Initially, its government database vending projects, online forums, and Model Information Systems will be new variations of conventional technological concepts that are now widely used in the commercial sector. Though these projects will have some unique characteristics, they will not employ new technology. Reference Point's systems consultants, KSI, will implement these projects with some of its existing videotext, electronic mail, publishing, and conferencing software, running on IBM System/88 computers.

However, parallel systems will also be developed for some of these projects. These innovations will introduce new concepts for public experimentation and review. The goal is to demonstrate how the thoughtful application of information technology can meet important individual and organizational needs.

For the more ambitious systems development, Reference Point and KSI are designing a unique index management system that will achieve an "open index" architecture to facilitate broad-based development of a variety of classification and cross-referencing schemes. This open architecture will enable different index development groups (from the information science, library, and subject area communities, for example) to work independently on component parts of a common system. Eventually, such a multi-indexed system will permit users to locate data through a variety of subject headings, maintained by librarians or subject authorities representing varying social, political, and technical perspectives.

The long-term system architecture is being studied on an ongoing basis; conversations with major public and private networks, facilities operators, phone companies, and other sources are yielding numerous approaches for a national public information system backbone. As Reference Point is an independent, non-profit organization, without ties to any particular technology or approach, its founders hope its catalytic efforts will help produce a system architecture flexible enough to meet the very diverse needs and goals of the disparate elements in American society.

BASIC REFERENCE POINT POLICIES

A number of important policies have been identified and will be refined to guide Reference Point in the coming years.

Expert Assistance Will Be Provided

- Because the process of preparing information for the Reference Point system will take some time and practice, Reference Point will have a staff of experts and a national volunteer group of experienced computer professionals to acquaint prospective users with the system and teach them how to prepare and update profiles and document abstracts, make inquiries, etc. Extensive training and a toll-free phone number will be provided.

Non-Commercial and Subsidized Fee Schedule

- Reference Point will follow a low-cost fee policy combined with ability-to-pay support for non-profit groups with low incomes. Connect time and data storage rates will be well below current commercial rates, and a Subsidized Research Fund will be available for those non-profit users who qualify.

- Furthermore, non-profit organizations with limited resources may find that Reference Point will actually save them a considerable amount of money that might otherwise have been spent on paying for outside searches, messenger services, express mail, duplicating costs, etc. And, if they have publications, products, or services to sell, Reference Point will help them increase their revenues.

Linking the Non-Profit Community

- Some important pioneering efforts to utilize information technology already exist in the non-profit community. They include communications networks such as the Telecommunications Cooperative Network (TCN); inter-organizational networking in a particular field, such as PeaceNet and the Human Care Network; BITNET, an academic electronic mail system; and many other Bulletin Board-type systems.

- A network of non-profit computer labs, such as the Public Interest Computer Association and the Nonprofit Computer Exchange of the Fund for the City of New York, has also been developing throughout the country.

Reference Point will work with these pioneering subject-oriented and computer training groups, helping them to link up with other organizations and expand their outreach in whatever way they choose.

Information Policies

• Privacy. Reference Point is committed to safeguarding the informational privacy of its users and the confidentiality of data entered into the system against improper or unauthorized use. Although Reference Point is clearly intended as a public information and public access system, it will carry only information that its members wish to disseminate. Furthermore, organizations wishing to send information or an action alert only to certain organizations — or to certain individuals within their organization — will be able to do so.

• Security. Reference Point comes under the protection of the 1986 Electronic Communication Privacy Act (ECPA). This federal law requires that a government agency must obtain a court order (which can be challenged) in order to search or require a system manager to provide information from an electronic system. ECPA also makes it a criminal offense for outsiders to attempt to get information through unauthorized access. To this legal framework governing outsiders, Reference Point will add system rules governing its users. Unless the user or searcher chooses to communicate openly with an information provider, the searcher's identity will not be conveyed to the provider, and will be stored only for the 60-90 days required for accounting purposes. To guard against unauthorized access, the system will be equipped with sophisticated security devices, passwords, audit trails, etc.

• Freedom of Information. Reference Point will be open to membership by all types of lawful non-profit organizations, of every viewpoint, interest, ideology, and organizational style. Reference Point will exercise *no censorship over the content of communications or documents put into the system*, provided they violate no laws. However, notices about the nature of some types of information (such as sexually explicit material) may be presented to users. Reference Point will not certify the accuracy or correctness of the information placed in the system, or express qualitative judgments.

FINANCIAL SUPPORT OF THE REFERENCE POINT PROGRAM

From 1984 to the present, the organizational and systems development of Reference Point has been supported by private funds.

Reference Point has been planned as a large-scale nationwide activity with a multi-million dollar annual operating budget. For its 1989-1993 Implementation Plan, Reference Point is seeking grants from public foundations, the information industry, and individual grantors concerned about how information technology can be used to improve the quality of life in our society.

CONCLUSION

Reference Point is an ambitious initiative. Yet, as the voluntary sector leaders, academicians, computer experts, and government officials who have enthusiastically responded to the concept attest, it is also practical, achievable, and extremely necessary.

Reference Point is being designed to bring greater order and accessibility to the vast and growing amounts of information in existence. But in focusing on public interest information, and on attempting to enhance the power and effectiveness of non-profit organizations and citizens, Reference Point will help equalize the balance of power among the major sectors of our society that is central to preserving our democracy in a high-technology era.

Reference Point's emphasis on non-profits and citizens does not in any way imply an adversarial role toward the government and business sectors. On the contrary, as previously noted, Reference Point will work as a facilitator, helping government agencies to better accomplish their mandate to deliver information to the public. Reference Point will also serve as a link between businesses and non-profits — connecting non-profits with potential funding sources and volunteer workers in the business community, and helping businesses obtain the publications and services they seek from non-profits.

Reference Point plans to tap the very best in America. In linking more effective use of information technology to more effective performance of voluntary action in the 1990s, Reference Point brings together two of America's greatest strengths. Our nation's tradition of voluntarism and citizen action, joined with our high technology, should enable us to work more effectively to solve major social problems and improve the quality of life in our communities and our nation.

APPENDIX MATERIAL

REFERENCE POINT FOUNDATION ORGANIZING STAFF

President	Dr. Alan F. Westin, Professor of Public Law and Government, Columbia University
Vice President, Organizational Relations and Communications	Anne Finger, public information consultant and voluntary sector leader
Vice President, Training and Volunteer Services	Dr. Michael Fiore, former IBM Personnel and Training specialist
Senior Consultants:	
Marketing and Development	Jim Awad, former IBM product planning and marketing specialist
Union and Government Applications	John Harris, former Special Assistant to the President, American Federation of Government Employees
Library Science and Classification	Patricia Read, former Vice President and Publications Director, The Foundation Center
Consumer Database Projects	Mary Gardiner Jones, President, Consumer Interest Research Institute and former Commissioner, Federal Communications Commission
Government Data Dissemination Studies	Dr. Stephen Frantzich, Professor of Political Science, U.S. Naval Academy
Public Access to Government Data	Jerry Berman, Benton Foundation Fellow (1989-90)
Survey Research	Dr. Wayne Parsons, Kane-Parsons, NYC

REFERENCE POINT NATIONAL ADVISORY COMMITTEE

Jane L. Anderson, Assistant Director, **Lutheran Resources Commission**
Gary D. Bass, Executive Director, **OMB Watch**
Robert Becker, Assistant Director for Publications, **Reporters Committee for Freedom of the Press**
Robert R. Belair, Partner, **Kirkpatrick & Lockhart**, Washington, D.C.
Jerry Berman, Director, Information Technology Project, **American Civil Liberties Union**
Charles G. Blake, Vice President, Corporate Management Information Systems, **American Red Cross**
Winifred L. Brown, Executive Director, **Mayor's Voluntary Action Center** (New York City)
Evelyn Caldwell, Librarian, **American Enterprise Institute for Public Policy Research**
Paul J. DiMaggio, Co-Chair, Program on Non-Profit Organizations, **Yale University**
Kay Drake-Smith, Director, Information Services, **VOLUNTEER: The National Center**
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Michael V. Fiore, President, **Management Development Associates**
Stephen Frantzich, Professor of Political Science, **U.S. Naval Academy**
Patricia Friedland, Director, Office of Information, **Community Service Society of New York**
Bruce Gilchrist, Senior Information Advisor, **Columbia University**
Myra Glajchen, Administrative Supervisor, **Cancer Care**
Charles H. Hill III, Director, Management Systems and Analysis, **National Urban League**
Mary Gardiner Jones, President, **Consumer Interest Research Institute**
Bruce Hodges, Director of Research for Resource Development, **Boys Clubs of America**
Paula Kaufman, Dean of Libraries, **The University of Tennessee**
Kenneth C. Laudon, Professor of Information Systems, Graduate School of Business Administration, **New York University**
Donald A. Marchand, Dean, School of Information Studies, **Syracuse University**
Bruce Posner, Program Director, **Fund for the City of New York**
Susan Reardon, Director of Data Processing and Administrative Services, **League of Women Voters of the United States**
Stephen L. Rose, Director, Information Services, **United Way**
Alice Shabecoff, Executive Director, Community Information Exchange, **National Urban Coalition**
Darwin H. Stapleton, Director, **Rockefeller Archive Center**
Denise A. Vesuvio, Manager of the Volunteer Communication Project, **American Association for Retired Persons**

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Dr. Bruce Gilchrist, Sr. Advisor for Information Strategy, Center for Computing Activities, Columbia University
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Susan MacDonald, Principal, Continental Strategies, Toronto, Ontario, Canada
Douglas E. Mepham, Principal, Continental Strategies, Toronto, Ontario, Canada

BRIEF BIOGRAPHY OF DR. ALAN F. WESTIN

Dr. Alan F. Westin, Professor of Public Law and Government at Columbia University, is one of the nation's leading experts on the organizational use of computers and the impacts of information technology on individuals, organizations, and society.

Among the 26 books he has written or edited are Managerial Dilemmas: Cases in Social, Legal, and Technological Change (Ballinger, 1988), with John D. Aram; The Changing Workplace: A Guide to the People, Organizational, and Regulatory Aspects of Office Technology (Knowledge Industries, 1985), with Baker, Lehman, and Schweder; Databanks in a Free Society (Quadrangle Books, 1972), with Michael A. Baker; Information Technology in a Democracy (Harvard University Press, 1971); Privacy and Freedom (Atheneum, 1967); two books on computers and citizens rights sponsored by the U.S. National Bureau of Standards (one in the health and medical field and the other covering personnel administration); and a monograph, Privacy and Quality of Work Life Issues in Computer Monitoring (1986) for the Congressional Office of Technology Assessment.

Among his published essays on social impacts of information technology are: "Technological Change and the Constitution: Protecting the Framers' Balances in a Computer Age," in Burke Marshall (ed.), A Workable Government: The Constitution After 200 Years (W.W. Norton, 1987); and "Computers and the Public's Right of Access to Government Information," in M. Hovitz (ed.), Advances in Computers (Academic Press, 1978).

His articles on issues of computers, privacy, and public access to information have appeared in the New York Times, Fortune, Computerworld, Datamation, Personnel Administration, Los Angeles Times, Business Week, and many other publications.

From 1973-76, he was a Presidential appointee to the National Wiretapping Commission. He served as Senior Consultant to the U.S. Privacy Protection Study Commission, and as chair or a member of many panels for the U.S. Office of Technology Assessment. He has testified often as an Expert Witness before committees of the U.S. Senate and House of Representatives.

Professor Westin has been a Member of the Working Group on Computers of the American Academy of Arts and Sciences and the Computer Science and Engineering Board of the National Academy of Sciences.

Presently, he serves on the U.S. General Services Administration's Telecommunications Privacy Advisory Committee. He has also written reports for GSA on privacy and freedom of information issues in FTS2000, the new federal telecommunications system to be built in the 1990s.

Professor Westin is one of the nation's leading authorities on the use of office systems technology, particularly how the use of video display terminals (VDTs) affects productivity, quality of work life, health and safety, and employee-employer relations.

With Kenneth Laudon, Professor Westin is currently co-directing a National Science Foundation project, "The Management of Information Technology in the Federal Executive Branch." This is studying the use of computers in the Social Security Administration, The Federal Bureau of Investigation, and the Internal Revenue Service, and the overall effects of large-scale computer use on the staffing, performance, and evaluation of Federal Executive Agencies.

Professor Westin earned his Bachelor's degree from the University of Florida, his law degree from Harvard Law School, and his doctorate in political science from Harvard University. He is a member of the District of Columbia Bar.

BRIEF PROFILE OF KNOWLEDGE SYSTEMS, INC.

Since 1984, Knowledge Systems, Inc. (KSI), of Chantilly, Virginia, has provided turnkey systems for internal and external electronic communications and information services. KSI is the creator of the "Knowledge System," a sophisticated solution for complex information management and distribution problems. The Knowledge Systems' full-text search and relational searching capabilities can handle the most complex search routines with plain-English commands. The search routines are compatible with those used by many online full-text services, such as Lexis.

The range of services KSI provides to enhance an information product include Electronic mail, Bulletin Boards, Conferencing, Full-Text Search, Application Generators, Asychronous and Synchronous Gateways, PC communications, Forms management, and accounting routines for tracking all system activity.

KSI's clients include United Communications Group, Time Life, Citibank, Certified Collateral, The Networks Corp., C. Itoh Trading Company, KLM Royal Dutch Airways, Tax-Analysts Corp., and many others.

Among KSI's projects have been the development of a large subscriber-based online service, NewsNet, which is now a major independent provider of newsletter publications; the implementation of one of the first international multilingual X.400 electronic mail systems for a large multi-national corporation (C. Itoh Trading Company of Japan), an inexpensive large-scale full-text legal information and research system for Tax-Analysts, a non-profit corporation providing IRS publications online; and one of the first large-scale efforts to integrate CD-ROM technology with online systems.

Jeff L. Entwisle, founder and chief executive of Knowledge Systems, Inc., is responsible for developing and implementing the company's research and development, operations, and strategies.

Mr. Entwisle previously served as director of technology for The Source, where he was responsible for all aspects of technology development; and as eastern regional systems manager for Prime Computer, where he developed all field technical support functions and ran Prime's eastern region technical support operation.

Mr. Entwisle holds degrees in computer science and humanities from the Massachusetts Institute of Technology, where he was a member of MIT's Architecture Machine Group. He also held research associate posts and managed the development of programs for computer-aided context recognition systems, artificial intelligence systems, and visual perception technologies.

Matthew R. Edelstein, a principal in Knowledge Systems, Inc., began developing the core concept and service features for the Reference Point System in 1983, and has been engaged in its elaboration since then. Mr. Edelstein previously served as a consultant to several information retrieval projects, including a videodisc-based picture retrieval system for a major stock photography company, which involved a host mainframe linked to images stored at an end user's location.

Prior to entering the emerging information industry, Mr. Edelstein was design and production director for Kovacs Design Group, New York, NY. He developed 80% of KDG's very successful product lines. A number of his products are on exhibit at museums of art and design and have appeared in television commercials, motion pictures, print advertisements, and magazine articles.

Mr. Edelstein studied political science at the New School for Social Research and environmental design at the Parsons School of Design. He later taught courses in environmental design and new product development and marketing at Parsons and served as director of the Parsons Design Resource Center, a unique program to develop and license student and faculty-generated designs to major manufacturers.

The Syracuse University School of Information Studies

The School of Information Studies is a leading center for defining both the theory and practice of information management in such major institutions as libraries, schools, governments, and businesses. It conducts interdisciplinary research and educational programs based on the view that timely, accessible, appropriate, correct, and useful information is a crucial resource in modern society.

Dr. Donald A. Marchand, Dean of the School and Professor of Information Studies, is an internationally known researcher, teacher, lecturer, and consultant on information resources management and the strategic uses and impacts of information technology in business and government. He is co-principal investigator with Dr. Sharon Caudle for the first National Study of Information Resources Management in the 50 State Governments, organized in cooperation with the National Association for State Information Systems and sponsored by leading information industry firms.

Dr. Marchand has written and edited a number of books and over fifty articles, book chapters, monographs, reports, and conference proceeding papers. He serves as consultant and lecturer for leading corporations, government organizations in the United States and other countries, and non-profit associations.

Dr. Sharon Caudle, Dean Marchand's co-principal investigator on the state government study, teaches information resource management and serves as a consultant on information resources management to the U.S. General Accounting Office and others. She previously served as a Budget Analyst at the U.S. Office of Management and Budget and in Management and Specialist positions in state and federal food stamp and social service programs.

Dr. Caudle is the author of Federal Information Resources Management: Bridging Vision and Action (1987), and many book chapters and articles. She received her Ph.D. in Public Administration from George Washington University.

Dr. Susan Bonzi is an expert on information retrieval, information resource management and related topics. Her study, "Trends in Information Science Education," appeared in the 1984 Bowker Annual of Library and Book Trade Information. She has received research grants from the Council on Library Resources, the National Science Foundation, and others. Dr. Bonzi received her Ph.D. in Library and Information Science from the University of Illinois.

REFERENCE POINT is located at:

1100 Trafalgar Street
Teaneck, New Jersey 07666

For more information, contact:

Alan F. Westin, President
(201) 836-9152

or

Anne Finger, VP/Communications
(201) 836-9549

Mr. Wise. Our final witness, Kenneth Allen, senior vice president of government relations for the Information Industry Association.

STATEMENT OF KENNETH B. ALLEN, SENIOR VICE PRESIDENT, GOVERNMENT RELATIONS, INFORMATION INDUSTRY ASSOCIATION

Mr. Allen. Thank you, Mr. Chairman and members of the subcommittee.

As noted, I am Kenneth Allen, senior vice president of the Information Industry Association. It's generally a pleasure to be the last witness of the day and to have an opportunity to hear everyone, although it is somewhat daunting to know that I'm the last witness between us and lunch. So, I will attempt to keep my remarks brief.

The Information Industry Association represents 750 leading companies pursuing business opportunities associated with the creation and distribution of information. The membership covers the entire spectrum of the information industry, traditional and electronic publishers, data base providers, financial information vendors, interactive electronic services, computer manufacturers, and telecommunications providers.

Although the association is only 20 years old, the private sector information industry is clearly much older. The first information companies, the newspapers and publishers who testified earlier today, have played a vital and valuable role in our society for the past 200 years.

During the past 20 years, we've seen this industry dramatically change, thanks to the introduction of new information technologies and communication systems. No longer confined to ink print on paper, newspapers and publishers are able to offer a diversity of information products in a variety of media. More importantly, today the information industry has expanded to encompass hundreds of new companies offering innovative products and services serving all sectors of our society.

For example, Dialogue Information Services provides librarians, students, and researchers immediate access to hundreds of data bases throughout the world. Our legal community, as many of the people in this room know, depends upon the accuracy and timeliness of the statutory information contained in Mead's LEXIS and Publishing's Westlaw.

Decisionmakers in both industry and government rely upon the economic reports in the forecast created by DRI and Compustat. Our world financial community invests billions of dollars annually as a result of the information created and provided by companies such as Dow Jones, Bechtel, and Disclosure. Today, statisticians and market researchers in industry and government may make greater use of Dun and Bradstreet's Duns number than they do of the Standard Industrial Classification Code. And congressional information services provided our citizens with excellent access to over 200 years of congressional hearings, reports and related information. Access, I might note, that was not available to our citizens before the private sector stepped in and provided it.

These are just a few of the thousands of products and services made possible by the private sector information industry. There are many benefits to that industry. The economic benefits alone and an annual growth rate of 20 percent annually and a positive balance of trade in new jobs is substantial.

More importantly, as an input to other sectors of our economy, it provides the capital and the necessary resources needed to enhance productivity throughout all of society.

Perhaps the most important benefit of the information industry is the role it plays in fostering the free flow of ideas and the right of citizens to acquire, create, and use information without fear of government control or intervention.

The value of the information industry and the emerging information age is not in the media of the information or in the provider of that information. The value is in the information itself, the content, and in the diversity of information sources.

The continued growth of this industry obviously depends to a great extent upon the role played by the Federal Government in the information age. We are therefore vitally interested in the issues before this subcommittee.

I wish to do as others have today, applaud this subcommittee on its willingness to address these important and complex issues. This subcommittee has played a critical role in leading the public debate on these issues and continues to do so. In fact, as mentioned, the 1986 report, Electronic Collection and Dissemination of Information by Federal Agencies, remains today, I believe, the best overall discussion of some of the issues we are here to debate.

Turning to the issues, the public's ability to acquire and use Government information is an important and complicated issue, as we've obviously heard today. Poor management of Government dissemination activities inhibits the ability of citizens to obtain access to information. It diminishes the value of that information which is available and it results in the unnecessary and inappropriate expenditure of taxpayer dollars.

But most importantly, the ability of citizens to acquire Government information is essential to the public's right to know and to the preservation of our individual liberties.

The issues themselves are not new. They've been debated and discussed for more than 200 years. What is new is the complexity and the importance that they take on with the advent of new information technologies which permit us to fundamentally reshape the ways in which we create, use and disseminate information. Yesterday's rules will not apply to today's problems.

Federal information policy, as perceived by the Information Industry Association, rests on three major principles. First, the public interest is best served when citizen access to Government information is guaranteed through a working partnership between all levels of government, the private sector information industry, nonprofit groups, and the important intermediaries in the library and education community.

Second, there should be a clear Governmentwide statutory policy framework to guide those responsible for Federal decisions about these activities.

Third, this framework should recognize that insuring public access to specific types of information or formats may require case by case decisions.

The goal of Federal information dissemination policy should be to insure that citizens have access to the Government information they want and need in the most efficient and effective manner. This goal is best achieved through the partnership. In establishing that partnership, which a number of us have talked about, we believe that Federal agencies and Federal decisionmakers must recognize that there are alternative methods for providing access to information.

Traditionally, the Government has approached active Government dissemination as the only or primary means of providing such access and today it remains a valuable tool in many instances. But there are alternatives. The inherent scarcity of taxpayer dollars and the inability to assess the value of Federal information dissemination programs guarantees that those users dependent upon Government for information will never be fully satisfied.

In some cases, it is in the public interest to explore alternatives, perhaps through organizations such as Reference Point. But perhaps as a catalyst in encouraging the private sector information industry to invest private capital to develop new information products and services responsive to the needs of a diversity of users.

The major impediment, we believe, to the issues we are discussing has been the tone of the debate. And we believe that recent attempts at shaping a Federal Governmentwide information policy have suffered because they have fostered the impression that the arena of Government information is territory to be carved up and protected. We believe that is a misjustice and a disservice to the public.

Federal policy must emphasize the public interest in efficient and effective information dissemination. And that policy must make clear that all three branches of our Government have an affirmative responsibility beyond the requirements of the Freedom of Information Act to insure that information is available for use by the public and that such availability is on an equal access basis to all. The policy should also recognize that there are a number of players who participate and contribute to the dissemination of information.

In establishing the policy framework, we believe a number of principles should be set forth. These include: Citizens have a right of access to public information; second, Government should employ new information technologies to improve the efficiency and effectiveness of Government programs and services; third, citizens should not be dependant upon Government as the primary or sole source of information; Government policy should seek to establish and preserve a diversity of voices and information sources by encouraging a fair and competitive marketplace for information products and services; and finally, no single entity, public or private, should be permitted to exercise monopolistic control over information essential to society's well-being.

Establishing the policy framework and the policy principles is critical. But within that, many of the decisions that we are going to make, that you are going to be called upon to make, are going to be

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case by case decisions. Ultimately, each issue or each activity depends upon a number of factors. It depends upon the type of the information, the users of that information, the Government's requirements and responsibilities, the resources needed, and the existence of similar information products. There is no decision tree that we know of that will provide a clear answer as to how the public interest will best be served in every instance.

You have previously heard about the SEC's activities to develop an EDGAR system. It is true that few agencies will tackle an initiative as significant as that. On the other hand, the policy principles that have evolved as a result of the 5 years of public debate and deliberation over EDGAR we believe are meaningful for many other Federal programs and agencies.

I am pleased to note that in that instance, as in many of the significant issues of information policy, the Congress and particularly this committee have played an important role in both leading the debate and providing a forum for the EDGAR system.

Let me turn for a moment to another issue on today's agenda, the Freedom of Information Act. Let me make no mistake that we in the information industry agree with those today who have previously stated their full support for the Freedom of Information Act. The public's right to acquire information held by the Government as expressed by this act is and must continue to be a major component of Federal information policy.

We are distressed to see those in the executive and judicial branches who are attempting to retrench from this fundamental policy. Furthermore, we believe that the provisions of the Freedom of Information Act must fully apply to information in all of its media. The public's right to obtain Government information should not be dependant upon or diminished by the media in which the information is made available.

Within that, let me suggest several specific provisions that this committee may wish to consider as it guides the debate on Federal information policy and provides guidance to executive branch agencies.

First of all, the Government should provide access to public information in whatever media it is available. We have run into a number of instances where agencies have information in both paper and electronic media and declined to provide the public with access to the electronic version because they had provided information in paper format. We believe that is a disservice and is not in the public's interest.

Second of all, in disseminating information the agency should insure that no party has the ability to exercise monopolistic control over the information. As stated by definition, monopoly control of information denies the diversity of information sources essential to preserving a free flow of ideas.

Third, Government information available to the public must be available to all members of the public on an equal basis, the cost not to exceed the marginal cost of dissemination.

Fourth and finally, a critical policy is that Federal agencies must not assert copyright or implement copyright provisions over their information products absent clear statutory authorization.

Finally, the subcommittee has asked for our thoughts on the mechanism for developing Federal information policies. There is clearly no single national information policy, nor any single body within the Government that has the expertise nor the mandate to develop such a policy. We believe that is appropriate. Nevertheless, we believe that the responsibilities assigned to the Office of Management and Budget pursuant to the Paperwork Reduction Act are appropriate and we urge that they be permitted to continue their activities. Those are essential activities which serve all of us. Moreover, within the policy framework discussed each agency must develop its own policies and regulations for those case by case decisions.

The public's ability to acquire and use Government information is an extremely important and complex issue. The debate on Federal information policy evolves just as the technology is. We appreciate the opportunity to share our thoughts with the subcommittee and look forward to working with you on these important issues.

Thank you.

Mr. Wise. Thank you very much.

[The prepared statement of Mr. Allen follows:]

Information Industry Association
555 New Jersey Avenue, N.W., Suite 800
Washington, D.C. 20001
202/639-8262
Cable: INFORMASSN WASHINGTON

FOR RELEASE ON DELIVERY
Expected on Tuesday
April 18, 1989

STATEMENT OF KENNETH B. ALLEN
SENIOR VICE PRESIDENT, GOVERNMENT RELATIONS
INFORMATION INDUSTRY ASSOCIATION
BEFORE THE SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE AND AGRICULTURE
COMMITTEE ON GOVERNMENT OPERATIONS
U.S. HOUSE OF REPRESENTATIVES

Mr. Chairman and Members of the Subcommittee:

I am Kenneth Allen, Senior Vice President for Government Relations of the Information Industry Association ("IIA"). I am pleased to be here today to testify on behalf of the IIA on the Federal government's information dissemination policies and practices.

The Information Industry Association is a twenty year old trade association representing 750 leading companies pursuing business opportunities associated with the creation, distribution, and use of information. The IIA's membership encompasses the entire spectrum of the information industry, including traditional and electronic publishers, data base providers, financial information vendors, interactive electronic services, computer manufacturers, and telecommunications providers.

Although the Information Association is only twenty years old, the private sector information industry is much older. The first information companies -- newspapers and publishers -- have played a vital and valuable role in our nation for the past two hundred years. During the past twenty years, however, we have seen this industry dramatically change and expand thanks to the introduction of new information technologies and communications systems. Newspapers and publishers are no longer confined to inkprint on paper -- they are able to offer a diversity of information products in a variety of media. Of more significance is the fact that the information industry has expanded to encompass hundreds of new companies offering innovative information products and services never before imagined or possible. These products and services are used by all sectors of our society.

For example, through the services of companies such as Dialog, librarians, students and researchers are able to gain immediate access to the knowledge contained in hundreds of data bases. Our legal community depends upon the accuracy and timeliness of the statutory information contained in Mead's NEXIS and West Publishing's WESTLAW. Decisionmakers in both industry and government rely upon economic reports and forecasts created by DRI and Compustat. Inventors have fast and efficient access to information on patents thanks to the products of companies such as DERWENT and Pergamon. The world financial community invests billions of dollars annually as a result of information created and provided by companies such as Dow Jones, Bechtel, and Disclosure. Statisticians and market researchers in industry and government may make more use of Dun & Bradstreet's Dun's Number than they do of the standard industrial classification code. Thanks to the initiative of the Congressional Information Service, our citizens have excellent access to over two hundred years of Congressional hearings, reports, and related information. And finally, many of us in this room track the status of Federal legislation through the services of the Washington Post's Legislate. These are just a few of the thousands of products and services made possible by the private sector information industry.

The economic benefits alone -- an annual growth rate of 20% and a positive balance of trade -- are very significant. Moreover, as an input to other economic sectors, the private sector information industry contributes to enhancing the productivity and economic growth of our entire nation. The most important benefit of the private sector information industry is the role it plays in fostering the free flow of ideas and the right of citizens to create, acquire, and use information without fear of government intervention or control. History is repleted with examples of societies where the citizens are dependent upon the government as the primary sources of information and are denied the safeguards offered by a competitive, private sector information industry. Fortunately, our nation has chosen a different path. It is important to remember that the value of the information industry and the emerging information age is not in the media or the provider. The value is in the information -- the content -- and in a diversity of information sources.

These are the companies represented by the IIA -- companies investing substantial private capital in new technologies to create and distribute innovative information products and services that contribute to our nation's economic, political, and social growth. Since the continued growth of this industry depends, to a great extent, upon the role played by the Federal government in the information age, we are vitally interested in the issues before this Subcommittee.

In addition, our industry -- more than any other -- knows the value of information and the challenges inherent in developing and offering information products and services based on new technologies. We are pleased to draw upon this expertise and assist the government in meeting the challenges of the information age.

For almost twenty years the IIA has watched -- and assisted -- Federal agencies pursuing the use of new technologies to collect, manage, and disseminate public information. In addition to working with policy organizations such as the Congress and the Office of Management and Budget, the IIA has actively participated with the Securities and Exchange Commission, the Interstate Commerce Commission, the Department of Transportation, and the Federal Maritime Commission, among others, in the development of their respective electronic collection and dissemination projects. The earlier hearings of this Subcommittee and its seminal 1986 report, Electronic Collection and Dissemination of Information by Federal Agencies, has led the way for all of us.

The Importance Of Government Information Policy

The public's ability to acquire and use government information is an important and complicated issue. Poor management of government dissemination activities can inhibit the ability of citizens to obtain access to government information, diminish the value of that information which is available, and result in the unnecessary and undesirable expenditure of taxpayer dollars. Most importantly, the ability of citizens to acquire government information is essential to the public's right to know and to the preservation of our individual freedoms. The ability of individuals to acquire government information -- and how they get it -- ultimately defines the relationship between citizens and the state. These issues, therefore, strike at the very core of our political system. We commend this Subcommittee for its past work and its continued willingness to tackle these sensitive and complex issues.

The issues are not new; they have been debated and discussed for more than 200 years. However, they have become even more complex and important with the advent of new information technologies which permit us to fundamentally reshape the ways in which we create, use, and distribute information. We therefore urge the Subcommittee to focus its attention on those policy issues emerging from the creation and distribution of information in electronic media.

Our suggestions regarding Federal information policy are based on three major principles. First: the IIA believes the public interest is best served when citizen access to government information is guaranteed through a working partnership between all levels of government, the private sector information industry, non-profit groups, and the important intermediaries in the library and education community. Second: there should be a clear government-wide statutory, regulatory, or policy framework to guide those responsible for Federal information dissemination activities. Third: this framework should recognize that ensuring public access to specific types or formats of government information may require case-by-case decisions -- there are no hard and fast rules that can be universally employed. I will address each of these topics.

An Information Dissemination Partnership

The IIA's position is that the goal of Federal information dissemination policy should be to ensure that citizens have access to the government information they want and need in the most efficient and effective manner. This goal is best achieved through a partnership in which government, the private sector information industry, non-profit groups, and the library and education community complement one another's activities in providing wide public access to government information. Ensuring and strengthening this partnership requires that, among other things, Federal agencies recognize there are alternative methods for providing public access to this information; and the method -- or methods -- selected should be those which best serve the overall public interest within the practical constraints that must dictate all governmental functions. Federal officials may consider direct government dissemination, financed through taxpayer dollars as the only way to provide the public with access to government information. However, the inherent scarcity of taxpayer dollars and the inability to assess the value of such information programs guarantees that users dependent upon the government for information will never be fully satisfied. Federal information policy should recognize that an alternative exists. In many cases it may be possible to better meet the needs of information users at less cost to the taxpayer if the government acts as a catalyst to encourage the investment of private sector dollars in the competitive creation and dissemination of new information products and services. By choosing the catalyst role, the government can guarantee the diversity of information sources on which a democracy thrives. It will also stimulate the investment of private capital towards the production of new jobs and the retraining of existing employees to use new technologies, and foster economic growth and maintain a favorable balance of trade.

Recent attempts at shaping a Federal, government-wide information policy have suffered because they have fostered the impression that the arena of government information dissemination is territory to be carved up and protected -- this part for the government and this part for the private sector --

just as sheep herders and cattle barons carved up the Old West. We do not support such a rigid, "either/or" approach to the dissemination of government information. We believe that Federal policy should emphasize the public interest in efficient and effective information dissemination. At a minimum, Federal policy should make clear that all three branches of our Federal government have an affirmative responsibility beyond the requirements of the Freedom of Information Act to ensure that its information is available for use by the public and that such availability is on an equal basis to all. The policy should also emphasize the valuable and legitimate role played by non-governmental entities in enhancing public access to government information. If the public is to fully benefit from its investments in the creation of government information, agency officials must recognize the private sector information industry as collaborators -- and not competitors -- in providing access to information.

Where the private sector is already disseminating an agency's information, for example, the agency's daily distribution of electronic copies of its data base often will suffice to get the information widely disseminated. The availability of electronic data at marginal costs will usually result in the availability of more private electronic services. This, in turn, will further stimulate what is often an already very competitive information marketplace. This competition will provide the public with a full range of services in terms of price and quality. If, however, the government provides the same services at little or no cost, this could jeopardize and discourage private sector investment in diverse information services. If the net result is that the government alone disseminates this information, then we are all losers as taxpayers and users of the information.

Principles For A Policy Framework

The IIA believes that the following concepts should form the basis of a government-wide framework for the development of federal information dissemination policies:

- Citizens have a right of access to public information.
- Government should employ new information technologies to improve the efficiency and effectiveness of government programs and services.
- Citizens should not be dependent upon government as the primary or sole source of information. Freedom of speech can only survive by ensuring a

diversity of voices and sources through the marketplace of ideas independent of the uncertainties of the appropriations process.

- Government policy should seek to establish and preserve a diversity of voices and information sources by encouraging a fair and competitive marketplace for information products and services.
- No single entity, public or private, should be permitted to exercise monopolistic control over information essential to society's well-being.

A Case-By-Case Approach

The preceding framework is essential to the development of Federal information policies. At the same time, implementation of these policy principles does not mandate the same solution for every agency considering how best to disseminate public information. Ultimately, these decisions will require a case-by-case approach. In each instance, the decision will depend upon a number of unique factors such as the type of information, the users, the government's requirements and responsibilities, the resources needed, and the existence of similar information products. Inasmuch as there is no decision tree to provide a clear answer as to how the public interest will best be served in every instance, these issues must ultimately be treated on a case-by-case approach, subject to the goals established by the overall policy framework.

A good example of this point is provided by the Securities and Exchange Commission's ("SEC") experience in designing its EDGAR ("Electronic Data Gathering and Retrieval") system. EDGAR will permit the SEC to annually collect, process, and disseminate over six million pages of securities filings electronically. All of these documents currently are printed and filed on paper. EDGAR will support internal SEC processing of registrations and other filings. The information collected by the SEC will be available to any member of the public in raw output form from the contractor under a regulated pricing scheme. This equal access approach to dissemination permits the SEC to substantially reduce EDGAR's development and operational costs, and simultaneously provide the public with much better sources of information by encouraging a competitive market for new products and services. Few, if any, agencies will seek to pursue an automation initiative as extensive as EDGAR. However, the policy objectives and principles developed during consideration of this EDGAR proposal are applicable to many other agencies.

Another good illustration is the current initiative by the Department of Commerce to establish the National Trade Data Bank created by last year's Omnibus Trade Bill. The National Trade Data Bank, which we supported, will enhance our nation's ability to export by providing a single source for government information relevant to international trade. No longer will U.S. companies have to wander through the halls of many federal agencies seeking relevant trade information. Once this information is collected by the Department of Commerce, it will be available to all members of the public on an equal access basis for the marginal cost of reproduction. This means that all citizens will have better access to the information at less cost. At the same time, this approach encourages the investment of private sector dollars in the development of new, more sophisticated information products and services that will further enhance our ability to export. This approach guarantees that the public benefits from the Data Bank -- both through better access to information and through the economic growth that will come from U.S. success in the international marketplace.

I am pleased to note that the Congress played a major role in shaping both of the above partnerships. By addressing these issues through the legislative process, all interested members of the public had an opportunity to participate in the deliberations and debate. The openness of this process resulted in the current approaches, embodied in statute, which are clearly in the public interest.

One final example of the public/private partnership is worth mentioning. The previous Administration proposed to eliminate the National Technical Information Service ("NTIS") by turning it over to the private sector under a privatization proposal. Although this function could be performed by the private sector -- perhaps quite profitably -- the IIA opposed this proposal because it was not in the public interest. NTIS serves the nation by providing a single source for much of the information produced through the government's investment in research and development. Moreover, the government has a responsibility to ensure the availability of this information -- a responsibility which the government would have abrogated through privatization. In testimony before the Congress, we urged that the NTIS be retained within the Department of Commerce and that steps be taken, such as reducing the cost of NTIS reports, to stimulate complementary private sector investment in new information products and services. Although not all our suggestions were taken, we are pleased to note that the original privatization proposal was defeated.

Through a partnership with the private sector information industry, the government is often better able to meet the needs of information users and to save taxpayer monies. These funds are then more readily available for new information collection efforts, and for the dissemination of information where there are no alternative sources. The result is funding for important government information projects such as the Environmental Protection Agency's new Toxic Release Inventory Database.

The Freedom of Information Act

This Subcommittee has also asked for comments on the Freedom of Information Act. Let there be no mistake, we fully support the FOIA. The public's right to acquire information held by the government -- as expressed by FOIA -- is, and must continue to be, a major component of Federal information policy. FOIA is the one Federal statute that most fundamentally advances the public's right to know. Without FOIA, there would be dramatically reduced public access to government information.

The IIA is concerned, however, that the pool of government information available through FOIA is rapidly shrinking. While we debate the proper role of government in the dissemination of government information -- as well we should -- the executive and judicial branches appear to be embarked on a path of retrenchment in the types of government information that the public may access. We urge the Subcommittee to be vigilant and ensure that a retrenchment does not occur.

Furthermore, we believe that FOIA's provisions must fully apply to electronic information. The public's right to obtain information held by the government should not be dependent on -- or diminished by -- the media in which the information is made available. Agencies should not be in the position, for example, of denying access to existing electronic information on the grounds that the same information is available in a paper format, or that other formats which may be created by a governmental entity other than the agency -- such as the Government Printing Office -- automatically remove that information from FOIA's purview. We urge the Subcommittee to support whatever steps are needed to preserve the public's right to know.

Ensuring Access to Public Information

To ensure efficient and effective access to government information, we recommend that Federal information dissemination policies incorporate the following specific provisions:

1. The government shall provide access to public information in whatever media it is available.

The form in which information is provided can make a great deal of difference to the way the data can be used. The cost and immediate availability of using electronic copies of a data base cannot compare to the onerous task of creating a data base from thousands of pages of paper documents. Indeed, the format in which the information is available from the government may determine the size of the audience that receives that information, or even if it is disseminated at all. In particular, agencies responding to Freedom of Information Act requests should not be allowed to curtail the dissemination of public information by denying access to data already available in a specific format merely because they have provided access to the same information in a different format. Cf. Dismukes v. Department of the Interior, 603 F. Supp, 760 (D.D.C. 1984). Agencies currently are spending valuable resources opposing what are clearly reasonable requests for information in existing electronic formats. A recent illustration of this is National Standards Association, Inc. v. Department of the Air Force, Civil No. 88-0172-TFH (D.D.C. 1988), a case settled last year wherein the Air Force agreed to routinely make available to the Department of Commerce, for public distribution, the magnetic computer tapes from which the Air Force makes microfiches of publicly available information.

2. In disseminating information, the agency should ensure that no party, public or private, has the ability to exercise monopolistic control over the information.

Monopolistic control of government information, regardless of who exercises such control, is not in the public interest and must be avoided. By definition, monopoly control of information denies the diversity of information sources essential to preserving a free flow of ideas. Moreover, monopoly control of government information will deny citizens the innovative new products and lower prices that can only come from a competitive marketplace. Thus, agencies and their contractors should be required to sell copies of their data bases in bulk. Federal policy should also require agencies to disseminate electronic information in a form or media which does not unduly favor a particular technology, software package, or hardware manufacturer.

3. Government information available to the public must be available to all members of the public on an equal basis at costs not to exceed the marginal cost of dissemination.

Discriminatory access to government information is outlawed by the fifth amendment to the U.S. Constitution and serves no public interest. Government information should be available to all members of the public on an equal basis. Agéncies should be required to disseminate information products in an even-handed manner, without being forced to do so by a court order as recently occurred in Journal of Commerce v. Department of Treasury, Civil No. 88-2132-CRR (D.D.C. 1988). In this case the Customs Service was forced to change its policy of electronically transmitting ship manifest data to U.S. ports weeks before the press or the rest of the shipping industry could gain access to the same data. The government should not be able to barter or trade preferential treatment as it attempted to do in this case.

4. Federal agencies must not assert copyright, or implement copyright-like provisions, over their information products absent clear statutory authorization.

For nearly a century, Federal law has specifically prohibited government agencies from asserting copyright in its basic information. This critical feature permits any person to reproduce and use government information. This has, in turn, enhanced public access to government information by encouraging the private sector information industry to take such information, add value to it, and create new information products and services. In those instances where a government agency has controlled its information through the assertion of copyright-like policies, such as the National Library of Medicine, the public has been denied the same diversity of information products and has had to rely primarily upon the government for information. We believe that restrictions on the redissemination of government information are inconsistent with the public's interest in a diversity of information products. Copyright law binds government agencies in other ways as well. Thus, Federal policy should clearly state that agencies disseminating information products which incorporate non-government materials protected by copyright are responsible for ensuring that all rights of the copyright holder, including prompt payment of royalties, are protected.

Developing Federal Information Dissemination Policies

Finally, the Subcommittee has asked for our thoughts on the mechanism for developing Federal information policies. There is no single national information policy and no single body within government is assigned the exclusive responsibility for developing such a policy. The IIA believes that OMB should continue developing policies pursuant to the Paperwork Reduction Act and other congressional directives. These are essential activities and they should continue. However, each agency must be responsible for the development and execution of its own policies. An example of this has been the Department of Commerce's effort to implement its own rules under OMB Circular A-130.

Conclusion

The public's ability to acquire and use government information is an extremely important and complex issue. The debate on federal information policy continues to evolve as information technology fuels changes in American society. The debate's evolution requires open-minded approaches by all of the participants. As the debate has evolved, our thoughts on federal information policy have similarly evolved. We thank this Subcommittee for the opportunity to share our views with it.

Mr. Wise. I want to thank the entire panel for presenting very well prepared testimony. I was able to read your statements last night, but I'm going to be frank. Some of your attachments wore me down too. So I promise to get back to them over the weekend. But I do appreciate the information that you've supplied.

I'm going to, in the interest of time and in the interest of lunch, submit a number of questions. I'm going to make you the same deal I made the previous panel, if that's agreeable. Some of them will be specifically directed to one or two of you and others will be broad based questions. But I would greatly appreciate it. And those responses will be made part of the record.

Mr. Schiff, do you have any questions?

Mr. Schiff. Mr. Chairman, I have no questions. I just want to say that as a new Member of the Congress and a new member of this committee, I appreciate listening to people who've obviously spent a number of years working in this area. I'm just glad to listen and learn.

Thank you.

Mr. Wise. Well, I think you've stated it well. You may be a new member to this committee. I'm a new chairman to this committee. The witnesses both in this panel and the ones preceding have reiterated one of the most important areas of jurisdiction for this subcommittee, which is the Freedom of Information Act and information in general.

I think, Mr. Berman, you made the point, as others have, that we are moving into the new electronic era. And I think that's an area that's definitely something that we have to keep exploring. I do not anticipate, as I said, for legislation necessarily moving this year. The Paperwork Reduction Act is something else. But I do anticipate that in the next few years that Congress is going to have to come to grips with this situation of electronic dissemination of information.

What we've got developing is a topsy turvy approach. Some are doing it well. Some aren't doing it. Or some aren't doing it at all and some aren't doing it well. It's mandated somewhat by economics and by popular demand, but that doesn't mean that some agencies don't have information that's very important in certain areas. So it is something that this subcommittee will be extensively involved in.

I suspect we're going to be back to all of you asking your assistance in the future. I appreciate your being the ones to start our initial set of hearings.

At this point, I'll declare the hearing adjourned.

Thank you.

[Whereupon, at 2:16 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

FEDERAL INFORMATION DISSEMINATION POLICIES AND PRACTICES

TUESDAY, MAY 23, 1989

House of Representatives,
Government Information, Justice,
and Agriculture Subcommittee
of the Committee on Government Operations,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:12 a.m., in room 2203, Rayburn House Office Building, Hon. Robert E. Wise, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Robert E. Wise, Jr., Glenn English, Al McCandless, and Steven Schiff.

Also present: Robert Gellman, chief counsel; Susan Chadderdon, clerk; and Brian Lockwood, minority professional staff, Committee on Government Operations.

Mr. Wise. This hearing will come to order. I promised Mr. McCandless and Mr. Schiff that I would express my reasons for being late on the record. I had 90 constituents, average age of 11, drowning on the Capitol steps. They were waiting for a picture. The photographer never showed and they were getting soaked. So I had to take immediate steps to solve their problem. I think that's something we can all appreciate. I invited them to the hearing, incidentally. I told them it was the dryest place around. I want to express my appreciation for your patience.

This is the second in a series of a hearings on Federal information dissemination policies and practices. This subcommittee is continuing its review of issues, problems, and activities affecting the public availability of public information. Today's focus is on libraries and library functions. We have four library associations represented, as well as two other organizations that perform library like functions. The National Technical Information Service is a Federal agency collecting science and technical information from other agencies and making it available to the public. The National Security Archive is a private nonprofit organization performing a similar function with defense and foreign policy information.

We will begin the hearing with the demonstration of compact disk technology. Because a CD-ROM disk can hold so much data, it provides a useful and economic way of making a lot of information available to users. While CD-ROM is not the only technology allowing for the wholesale dissemination of Government information, it is one of the most exciting.

I'd like to spend a minute on the idea of wholesale dissemination of information. In some ways, we can view the Freedom of Information Act as a retail information dissemination mechanism. Each FOIA request is from one individual or group and each response satisfies that one requester. While the FOIA will always remain as a vital way of making Government information available to those who want it, the Government cannot meet its obligations to inform the public solely through FOIA. We need to support other ways of sharing Government information.

One way is to provide users with copies of Government data bases, along with the proper software tools. Each user can then manipulate the data to meet his or her own needs, rather than rely on the Government. Another approach is to make Government data available to those in the business of sharing information with others. This includes libraries, public interest groups, like the National Security Archive, and private information companies. Those who make Government data available to others help the Government meet its obligations.

A diversity of sources also keeps the Government from being the only supplier of information to the public. Wholesaling is important because the Federal Government cannot provide every information product and service to every possible user. It simply cannot afford it. The Government cannot afford to provide every information product and service to every library. Because of limited resources, the Government has to make hard choices.

We have to find the most effective, efficient, and equitable information dissemination methods. That is a principal policy issue confronting the Congress.

Let me add a note—I've got to get a plug in—about a bill that I introduced last week. The Information Policy Act of 1989, H.R. 2381, is designed to establish Governmentwide information dissemination policies by directing the Office of Management and Budget to issue guidance under the authority of the Paperwork Reduction Act. I hope that the ideas in this bill will be considered in the context of the reauthorization of the Paperwork Act.

While comments on the Information Policy Act are welcome, I do want to make it clear that we're not conducting a hearing on H.R. 2381 today. This series of hearings has a different, albeit overlapping, purpose. Paperwork legislation falls within the jurisdiction of another Government Operations subcommittee. Nevertheless, I hope to work closely with Chairman John Conyers on this aspect of the reauthorization and to play a role as that bill proceeds to the full committee.

I want to express my appreciation to those of you who have taken the time and some of you have traveled long distances to be here today. We look forward to this hearing.

I'll now ask Mr. McCandless if he or Mr. Schiff has an opening statement. Mr. McCandless.

Mr. **McCandless**. Thank you, Mr. Chairman. I have no opening statement.

Mr. **Wise**. Mr. Schiff.

Mr. **Schiff**. Thank you, Mr. Chairman. Neither do I. I'm just looking forward to listening to the witnesses. Thank you.

Mr. WISE. Thank you very much for attending, both of you. We will first hear from Mr. Jerry McFaul, with the Office of Scientific Information, U.S. Geological Survey, and the Chair of SIGCAT, Special Interest Group of CD-ROM Applications and Technology. Mr. McFaul, and to all witnesses, in this committee, so as not to prejudice any witness that may appear before the subcommittee, we have a tradition of swearing all witnesses. Do you have any objections to that?

Mr. MCFAUL. No, sir.

[Witness sworn.]

Mr. WISE. You may proceed.

Mr. MCCANDLESS. Mr. Chairman, this gentleman is from the Weather Service, is that right?

Mr. MCFAUL. No, sir. The weather's not my fault.

Mr. WISE. If you could have told me that the Elizabeth Grade School was going to run into this, I'm sure we could have saved a lot of time over here.

Mr. MCCANDLESS. We might prejudice him, realizing that weather is not an exact science, you understand, and you've just sworn him in.

Mr. WISE. Neither is politics, that I'm aware of.

STATEMENT OF JERRY McFAUL, COMPUTER SCIENTIST, OFFICE OF SCIENTIFIC INFORMATION, U.S. GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR, AND CHAIRMAN, SPECIAL INTEREST GROUP ON CD-ROM APPLICATIONS AND TECHNOLOGY

Mr. MCFAUL. Thank you, Mr. Chairman. Good morning. My name is Jerry McFaul. I'm with the U.S. Geological Survey, so we have no direct responsibility for the weather. We, at the USGS, have been tracking this technology called CD-ROM for over 4 years. We first saw it as a very exciting potential to distribute earth science information. Our agency, the USGS, of course, deals with large earth science data bases. We now believe this technology will give us a brandnew way to disseminate this information to many more people than would otherwise have access to it via the mainframe environments in which it typically resides.

What I'd like to do today is just give you a very general overview of this technology as to how it relates to something you may be familiar with—the CD audio disks that you can now buy in music stores—and try to bridge the gap between that and this thing we call CD-ROM, which is the computerized version of CD audio disks. The disk that you have in front of you—we've given each one of the subcommittee members a copy of the GLORIA disk—a disk we produced at the U.S. Geological Survey. This is equivalent to about 51 magnetic tapes worth of information fitting on this one particular disk.

Before, when that information, which is from the Gulf of Mexico sea floor was to be duplicated by someone interested in that particular area of the world, it would take a considerable amount of time to replicate those 51 tapes, obviously. We can have these disks replicated at the facility that produced this for us, of which there are a dozen around the country, for about $2 a piece. The disks actually are made about one every 10 seconds in the mastering facilities. So things have come quite a long way in terms of being able to replicate extremely large volumes—picture 51 magnetic tapes—in about 10 seconds and at a cost of about $2 a piece.

There is an upfront mastering cost to set up the disk, which is typically around $1,500 today, but the replication cost of about $2 is the industry average. That, then, makes it a very, very low-priced way to disseminate large mainframe-sized data bases to anyone who has a PC—this is a typical PC—and a CD-ROM reader—the CD-ROM reader is embedded right in this PC. I take the disk that you have in front of you and I'm placing it in the CD-ROM drive. It fits into the same cavity that a half-height floppy drive would typically use, and I've now introduced 600 megabytes or so to this PC.

So I've put a mainframe-sized data base into this PC and that's the exciting potential of this technology. What I'd like to do is just give you, again, some highlights of the technology. There are various types of optical technologies on the market now. You've probably heard of things like write once or erasable optical technology. But CD-ROM is different, distinctly different, in the fact that it has standards. It has physical standards, by virtue of the audio market and the audio industry, where they were established. Compact audio disks have standardized the technology worldwide in terms of size, diameter of the hole, and the other physical properties.

The physical dimensions, that is, the physical standards are a big plus to this technology. But probably even more important, is the logical layout of this disk; in other words, how this disk appears to a microcomputer. That is also cast into a standard from the International Standards Organization [ISO] 9660, as the logical layout. So the result of all that is that we have a very standardized technology in this thing called CD-ROM, and that goes a long way in making a very interchangeable, a very disseminatable, if that's a word, technology. People can buy any of a dozen different readers.

They can use any of 100 different PC's, in both the Apple and the IBM environments, and read this disk. So it's a publishing and, a distribution technology. It's not just another peripheral to a PC. It's not just another interesting little thing to add. It is a publishing technology that is very significant, we think, to the Government because we have so much data residing in our Government vaults.

We want to be able to get it out to the public, to people who have paid for the accumulation of this information, and we think this is the most cost-effective way that has ever come along and will ever come along because of the standardization inherent to it.

The cost of production, as I mentioned, is low; $2 a piece for these disks is what the industry is currently charging. The readers, this sort of reader, is roughly a $600 item right now. We believe that cost will go down to the $200 or $300 level because it's following the exact cost curves of the audio player that I can buy at a local discount house for $88. So we see a very attractive potential there for these things becoming so low priced that they'll become almost a nonissue.

You'll buy a PC and you'll have a hard disk and a floppy and a CD-ROM drive and not think twice. That will be the standard configuration. The density of the media, as I said, is extremely high. This holds upward of 650 million characters, or 650 million bytes in computer terminology, which is equivalent to, as I said, that rack of 51 tapes in the case of this GLORIA disk.

Suffice it to say that's a lot of information; 300,000 pages of text would fit on here. The entire Code of Federal Regulations, titles 1 through 50, easily fit on here with an index to every word. Those types of volumes easily fit on a CD-ROM disk. Encyclopedias have been put on very effectively. The media is very stable. In addition to it being 50 times less expensive than magnetic tape to store information, it has a shelf life that's really indeterminate. If you put these away in a safe or a coffee can they'll probably last forever.

A magnetic tape, as you are probably aware, does have a maintenance requirement associated with it which is nontrivial in the case of large tape libraries. But with CD-ROM, we have a media that's extremely stable and long lived and it provides something much different than magnetic tape in the fact that I can get to any place on this disk very, very fast. So it lends itself to use on a microcomputer, as we'll see in a second, by giving an interactive response time. I can find a word anywhere in this huge text volume or I can paint a picture from an image file.

I can do that very fast because an optical head inside is searching in what's called a random access mode as opposed to a magnetic tape where I've got to sift through the entire tape reel. So there's an entirely different organization to this disk that makes it much, much different from the traditional magnetic tape world. So with that little overview on the technology, let me get into a demonstration of a couple of disks that we have produced at the U.S. Geological Survey. This should give you a better feel for the responsiveness and the types of things that one can put on these disks and make available to scientists.

I gave Mr. Gellman an article I found in the Scientist Magazine, in which a professor at UCLA was talking about using the CD-ROM disk that was produced by the National Oceanic and Atmospheric Administration [NOAA], where the world's definitive data bases on geomagnetic and solar flare information are all in one spot.

[Material referred to found in appendix.]

Mr. McFaul. They're all right here on this one disk. And the scientist, by virtue of that information being available to him in a PC and on a single CD-ROM disk, made a discovery that apparently is rather significant. It saved the Government money not having to redo an experiment.

The scientific agencies were quick to take to this technology. Also, the library environment was a natural to pick up on the technology because they deal in such massive information and textual data bases. Most library environments have CD-ROM readers already. For instance, the Federal depository libraries [FDL] are over 40 percent populated right now with CD-ROM readers.

GPO is taking advantage of this and helping distribute disks to the FDL's. So we're seeing a natural marriage of this technology to information environments, like libraries, and I think that's important, because it's getting the Government's information and making it accessible to the public in a whole new dimension than heretofore was available. So if you don't mind, I'll dim the lights a little bit, and if everyone promises to try to stay awake, we'll take a look at this technology.

[Demonstration follows:]

Mr. McFaul. What we are looking at or will be looking at first is the disk we call GLORIA, which stands for the geologic long range inclined ASDIC, a fancy name for bouncing sonar off the ocean floor. We are finding out what the sea floor looks like and then putting that information into a file, and that file is on this disk. We are now able to look at those images, in this case for the Gulf of Mexico. We and the British. They developed the technology; we use it.

We have scanned all the exclusive economic zones around the territories of the United States, a 200 mile swath, which is actually a larger area than our land mass. We put all the information on magnetic tape, and we have taken the set of that data for the Gulf of Mexico and put it on the first disk that has been made generally available from the USGS.

We can look at the images via this menu. We have put this disk together with software that is typically known as public domain software. It is readily available and we have tried to use it to keep the cost of this disk very low. In fact, this particular one we are giving away to interested parties.

We get into this disk by first looking at what are called the 2-degree squares. Now, I typically just select menu items as a friendly way to get into this information. We are also using two different software packages, one developed at NOAA, the agency I mentioned before that put out the geomagnetic disk that sort of caused that discovery to be made, and another software package from NASA.

We were aware of these two other organizations getting into CD-ROM and developing software for the display of images by virtue of the organization that I mentioned earlier called SIGCAT. SIGCAT has pulled together over 300 Government organizations that are interested in CD-ROM. I started SIGCAT CD-ROM about 3 years ago to just share information about this technology throughout the Federal Government. One of the benefits of that has been the awareness of software packages of the type we are now going to look at and then applying those to our disk and not having to reinvent the wheel.

So we typically will look at the opening images with NOAA software, labeled "NOAAD" on the display screen. What it does is now go out and access a small amount of information off the CD-ROM disk and draw the Gulf of Mexico. We divide the display up into 2-degree squares and we can pick any one particular square by moving the cursor around—there is one of my favorite squares—and blow that particular square up now to a much larger size.

We do something called false coloring. We take the image of the ocean floor, which might not be particularly meaningful to you and I but, it means a lot to an ocean scientist. Suffice it to say there is a lot of very meaningful geological information being shown there, including things like debris flows and ancient riverbeds. In fact, one of those ancient riverbeds is interesting to look at.

We can do things like change the false color on here. NOAA did a very fine job in providing us an interface, which is the result of about one or two person-months worth of effort.

I can also put a small window on the screen, a zoom window, and move it to the place that we want to investigate; for instance, somewhere up around here. Now, the small window I drew there will now be expanded, and it pulls the original data now off the CD-ROM. This is a rather large file that it is reading. It is about a 16 million byte file, so that is like reading, almost a full magnetic tape. A typical magnetic tape will hold about 25 mega bytes. It is reading two-thirds of a full magnetic tape this quick.

Now, if you can remember back to the classic view of a computer, tape reels always seem to be spinning in some room somewhere, giving you the impression the data is flowing all around. Well, one of those tape reels contains the equivalent amount of data that we are drawing here.

You can start to see the meandering riverbed. This is an ancient riverbed, about 10,000 years old, under the Gulf of Mexico, and is starting to become visible by virtue of the data we are now displaying. I can do this on a computer system that costs roughly $2,000 or $3,000, including the CD-ROM drive. I couldn't do, even this relatively primitive level of analysis for anything less than 10 times of that price 2 or 3 years ago.

So what we are doing here is providing a tool to researchers and scientists by virtue of high-end PC's—which are becoming even more and more powerful—and massive data sets on CD-ROM. In this case we are able to get 51 tapes worth of information to the scientist at his or her desktop.

We can now take a look at that same file with the NASA-provided software. Now we are taking advantage of something that was developed for the NASA Deep Space Voyager Program where they transmit images back from the outer planets and use this software to display it on PC's.

We can apply this software to our GLORIA data, and now we are looking at that same image I just showed you, but now using that software from NASA. If I were to change from color to black and white, it allows one to further investigate that meandering riverbed. I could again change the colors by using a palette to edit. Assume for a moment a scientist wanted to investigate those white areas. I'll highlight those areas with color to give them a little more definition. You can see the image changing in real time on the display and some of the colors starting to take shape.

This tool is a publicly provided piece of software from NASA, and offers a very powerful tool for analyzing large Earth science data bases, in this case a sonar sea floor map of the Gulf of Mexico. This software gives scientists a tool that many of them never had before, or if they did, it might have cost $20, $30, $50,000 for supporting hardware. Now they can do the same thing for one-tenth of that price.

I can also do things like overlay a profile on this image. I move the cursor up here, as if I were a scientist investigating that riverbed. I can move over and put one end of the line there and move down and place the other end of the line about there and the software quickly draws a cross section or a profile across the image.

You can see the two peaks that correspond to the maximum data values within the ancient riverbed. This type of analysis is a powerful asset in the hands of a scientist who is working in this field.

These types of tools now are available on the PC, and when they are coupled with the incredible data storage of mainframe-sized data bases that the CD-ROM offers, it is a rather exciting prospect. On this particular disk we also put the baseline data so scientists can go back and analyze the original 6-hour images.

We also put the documentation for the GLORIA project directly on the disk, which was written by Dallas Peck, Director of the USGS. One could page down and read this entire thing, so this is on the disk itself, or I could even search for the word "GLORIA" and quickly find the occurrence of the word in the documentation that which are just convenient tools but it is all very possible and doable now that the PC has the power it has. We are able to, again, marry up the power of the PC with the voluminous data capacity of a CD-ROM disk.

That is a quick overview of the CD-ROM disk called GLORIA, the one you have in front of you. This disk contains data which a scientist dealing in this area of the exploration of our ocean resources would find very, very powerful and useful. We have distributed about 200 of these disks to researchers and scientists around the world and have thus gotten the entire 51-tape archive into the hands of 200 scientists. So it is no wonder that correlations and discoveries are being made because this is the first time that such a capability is being put directly into the hands of scientists.

There is another capability inherent to CD-ROM which I will touch on as I change this disk. We are looking here at images, and images typically take up a lot of space. That is why CD-ROM is powerful for this type of application, but there is an entirely different type of use of CD-ROM that I touched on earlier when I said encyclopedias have been put on CD-ROM. The Groliers Encyclopedia, as well as several other scientific encyclopedias have been put onto CD-ROM with an index to every word.

In the case of that Groliers Encyclopedia, which has been a product for a couple of years, there are about 50 million bytes or characters of words that comprise the encyclopedia, but the index of that encyclopedia is 60 million bytes. The index is actually larger than the text of the encyclopedia. That is because the index is so powerful and allows one to find any word within a matter of seconds.

We have a disk here with selected water resources abstracts. These are all of the published scientific papers about bodies of water anywhere in the world that the USGS accumulates through its WRSIC program, Water Resources Scientific Information Center. About 2 years ago, WRSIC adopted CD-ROM because it provided the capability of accessing massive amounts of information, again at the desktop. So I have just switched the CD-ROM disks here. I want to put this other one in.

We will take a quick look at the WRSIC disk. This disk contains about a quarter of a million abstracts from scientific research having been done on bodies of water around the world. They are all on this one disk with access to the information very, very quickly.

The first display gives you a little introductory screen as to what we are looking at.

I can search any of the fields in the record here. I will typically search the abstract field. We had a couple of suggested topics to look for. Let me back up a little bit. For some reason my color turned off here. Let's see if we can get that to come back. Murphy attends, as I said, almost all demonstrations, and he is definitely sitting in the room today.

There is something in the computer profession referred to as rebooting the computer. This sets things anew and resynchronizes things. While we are doing that, I would like to touch on some of the other disks that have recently come out of the Federal Government.

The Census Bureau is putting massive amounts of census information on CD-ROM. They are putting the 1982 agricultural census, the American housing survey, as well as the 1990 census is going to be on CD-ROM. In fact, they are putting on CD-ROM some files that have never been put into print. The ability of CD-ROM to provide access to these files is interesting from a couple of aspects.

No. 1, the files can be accessed very, very quickly, and you will see us do a word search here in a second. But No. 2, those words are machine readable, meaning I can pull them into a word processor and develop reports and items that are directly manipulatable by word processing software, or I can pull them into a spread sheet. I can do things with the information other than just look at it because it is machine readable. It is compatible with this little box I have got here and the software that runs in this box.

As we did before we will pick the abstract field and that is the field we will search and we will hit the F10 key to go to the search mode. The system is now setting up and letting us look for any word in any of those 250,000 reports or papers. By the way, that equates to about 525 million bytes of information or characters of information. Now we're going to search it and I am going to look for the key word "stonewall." I'm not a typist as you can tell. Now, we're going to do what's called a boolean "and." We're going to look for the word "stonewall" and the word "dam" in any of those 250,000 abstracts.

I found "stonewall" 16 times. It's now searching through the index which, as I mentioned, is often bigger than the text file itself. As you can see, it's ticking off the numbers of occurrences of the word "dam" that it's coming across as it performs the search in real time. Typically, before CD-ROM came along and before the indexing power of the software that goes with CD-ROM was available, you could only do this on a mainframe and you would do it under what's known as an online timesharing service. You would also typically have someone do it who knew what they were doing.

In other words, a "priesthood" often grew up around the use of online services because first of all, the meter was running all the while the online service was being used. There's a time charge associated with it and the search procedures are somewhat sophisticated. So typically a group would develop that knew how to do searches very efficiently and that's who you would go through to have your searches done.

CD-ROM's changed all that with the intuitive interfaces such as the one that you're seeing demonstrated here. Anyone in this room given this disk could probably sit down and work their way through it in a half hour and be fairly comfortable with it.

We're now looking at the first of four occurrences of the Stonewall Jackson "dam." Does that ring a bell with anyone there? I hope it does. We can blow that screen up and make the whole screen readable. We can hit the next record. See the top left hand corner? We're at record one of four. I'm going to pull to record two off the CD-ROM disk. Now we're looking at that again, the Stonewall Jackson "lake" and associated "dam" projects, and so forth.

We've just searched through 250,000 articles and found four of interest to us here if that were our search criteria. We are able to now peruse those articles. We can actually look at not only the text of the abstract here but we could look at the entire record. We jump back to view the entire set of fields in a record and they look like this. We have an I.D. number and some corporate authors, title, citations, all the typical things that go along with a bibliographical citation. We're focusing on the abstract information and again, if we go down to the abstract and blow it up, we see the text that actually got us into this particular record.

You can see the speed of access and that's typical of a CD-ROM disk. It doesn't matter how full it is. The indexing capability of the software is so powerful every word is accessed—not just the key words. So you'll find any subtle reference to whatever you're looking for buried anywhere in that—in this case the selected water resources abstracts [SWRA] data base or the Code of Federal Regulations—you'll find that obscure reference very, very quickly and then you can do things with it like merge it into a word processing system and so forth.

So those are two quick examples of an image file and a text data base file search. Maybe I ought to turn the lights back on and open it up to some questions here.

[The prepared statement of Mr. McFaul follows:]

STATEMENT OF E. J. (JERRY) MCFAUL, COMPUTER SCIENTIST
U.S. GEOLOGICAL SURVEY, DEPARTMENT OF THE INTERIOR

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE

COMMITTEE ON GOVERNMENT OPERATIONS

HOUSE OF REPRESENTATIVES

MAY 23, 1989

Good Morning. My name is Jerry McFaul. I am a computer scientist at the U.S. Geological Survey (USGS) and a principal investigator of optical storage for USGS, focusing on CD ROM. I am also chairman of the Special Interest Group on CD ROM Applications and Technology (SIGCAT), currently involving over 2,500 members in government and the private sector worldwide.

The USGS collects and interprets data and disseminates information on water, mineral, and energy resources which are critical to the well being of our Nation. This task has been performed admirably over the years by a dedicated and professional corps of USGS people who have earned the respect of scientists around the world.

In the USGS, like most other scientific agencies, data collection has been developed to a true science, but data dissemination is still an imperfect art. This is mainly due to the lack of an effective means with which to implement widespread data dissemination. This situation is now about to change. A new and revolutionary means for the cost-effective distribution of digital data now exists and is beginning to be explored. Known as CD-ROM (Compact Disc - Read Only Memory), this technology offers orders-of-magnitude improvements over previous methods of data dissemination.

A CD-ROM disc is nothing more than computer version of the increasingly familiar audio compact disc. The CD-ROM technology embodies and takes advantage of many desirable characteristics of the audio disc making it extremely attractive for a wide range of information management and data dissemination applications. Some of these characteristics are as follows:

1) The Existence of Standards - CD-ROM is distinctly different from other types of optical storage in that both physical and logical standards exist. The physical standard resulted from the CD audio specification promulgated worldwide by Philips and Sony. The logical standard is a result of the efforts of the High Sierra Group and, more recently, the International Standards Organization. The existence of these standards adds a degree of stability and longevity to the technology that ensures hardware and software compatibility for the foreseeable future.

2) Low Cost of Production - The cost of producing of CD-ROM disc has fallen significantly over the past 18 months. A disc can now be mastered for around $1,500 and replicated at a cost of $2.00 per disc. Thus, for a run of 500 discs,

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the cost per disc would be approximately $5.00. These prices are based on 5-day turnaround, with 1-day turnaround available at a higher cost.

3) Inexpensive CD-ROM Readers - The cost of readers is currently in the $500 to $700 range and is expected to drop further as prices continue to follow the lead of CD audio players which use essentially the same technology.

4) High-Density Media - A single CD-ROM disc weighing less than an ounce is capable of storing over 650 megabytes (millions of characters) of data. At $5.00 per disc, the cost of using CD-ROM storage works out to a media cost of less than 1 cent per megabyte compared to a cost of $.50 per megabyte on a medium density (1600 bpi) magnetic tape. The small size of a CD-ROM disc translates into reduced data dissemination costs, when 650 million bytes (about 300,000 pages of text) can be mailed across the country for less than a dollar.

5) Stable Media - In addition to CD-ROM media being about 50 times less expensive than magnetic tape, CD-ROM discs require no special storage environments or periodic maintenance as is often the case with magnetic tape.

6) Direct Access Data Structure - CD-ROM provides direct access to any data contained on the disc in contrast to magnetic tape which affords only sequential access. With an average access time of well under a second, CD-ROM provides an information environment well suited to interactive processing.

We've just taken the first few steps of a long journey that I believe will change the way in which our society deals with data and information. Many of these applications are already beginning to revolutionize the data distribution activities in a number of our governmental institutions. But, even beyond its ability to make data and information more readily available at lower costs, CD-ROM holds out the prospect of actually altering the distribution of global information processing resources.

As head of the Federal Government's Special Interest Group on CD-ROM Applications and Technology (SIGCAT), I receive several phone calls a day from people all over the country inquiring about this new technology called CD-ROM. The level of interest, particularly throughout the Federal sector, seems to be accelerating. Many agencies are now moving beyond the prototype stage and are gearing up for mass production. If some of our production estimates hold true, the Government alone will double the total number of different discs available in the industry over the next 12 months. That prediction seems rather bold, but given the resources now being committed to these projects, there's a good chance it will come true.

There are several reasons behind all of the domestic CD-ROM activity. First is the economic motivation. CD-ROM applications can produce some rather dramatic reductions in the costs of accessing and disseminating information. The Patent and Trademark Office reports that it financed its entire CD-ROM project through the savings realized by decreased online costs. The National Aeronautics and Space Administration lowered the price of one of its data products by a factor of over 100 (from $8,000 on magnetic tape to $21 on a 3-disc CD-ROM set). Another reason for the groundswell of CD-ROM activity is productivity improvement. When the USGS can reduce the time required to access earth science information from half an hour on microfiche to several minutes on CD-ROM, the project receives a lot of attention and encourages others to try for similar results.

All of these CD-ROM projects are contributing to and helping build a technology base. Such a base is necessary for the stability and longevity of CD-ROM and provides the foundation needed for continued growth. There are many contributors to this technology base. Users are contributing by accepting CD-ROM as a new way of managing their information at the PC level. Technology and service providers are contributing by opening up new opportunities and markets as they begin to truly understand and exploit the benefits of CD-ROM. Entrepreneurs are contributing by developing innovative new products incorporating CD-ROM. But the potential of CD-ROM technology to profoundly change our global society is only beginning to be explored. In fact, the Federal government, through its innovative and increasing use of this technology, is among the leaders in spurring other organizations, both private and public, to use CD-ROM technology for creative applications worldwide.

Without a doubt, all of the domestic activity in CD-ROM is very exciting. Indeed, a whole new American industry has been established in just a few short years. But the use of CD-ROM also has implications on a worldwide scale. This technology can finally provide underdeveloped countries with the ability to become full-fledged members of the global computing community. CD-ROM's ability to provide access to hundreds of megabytes of data, coupled with the incredible power of today's microprocessor chips, allows any Third World country to assemble a workstation with mainframe-like data processing capability for under $10,000. That same country can then begin to address national resource management projects that were heretofore impossible. This capability translates into a potential for enormous social, economic, and environmental progress. It also encourages a feeling of independence and self-determination that is not possible when a country must depend on wealthier nations to provide "mainframe aid."

In many countries, where telecommunications to support conventional online database access are either outrageously expensive or simply nonexistent, CD-ROM offers the only practical alternative for large database access. In light of this situation, the Pan American Health Organization has distributed over 300 CD-ROM systems throughout Latin America; as a result, for the first time, local health officials now have access to up-to-date, comprehensive medical databases. The implications of these types of applications, which can dramatically improve the quality of life for an entire populace, are immense.

Another attribute of CD-ROM, that I believe will eventually eclipse all of the economic and productivity benefits discussed so far, is its ability to combine multiple disciplines and information perspectives on a single, low-cost medium. For example, the USGS is currently developing a single disc which will contain several large and distinctly different databases addressing the same geographical region. Geographic Information Systems (GIS) technology already employs this multidisciplinary approach to problem analysis by "overlaying" various geographically related data sets. In the past, the data sets that are typically used with today's GIS's were so large that only mainframe and minicomputer systems could accommodate them. The vast storage capacity of CD-ROM has changed all that and allows GIS technology to be implemented on high-end PC's, so that a global community of users can have access to this powerful means of problem analysis.

We are already beginning to witness this "synergy of CD-ROM" in the scientific community, where discs are now being produced that contain virtually all of the available definitive information on specific subjects. This capability is beginning to provide researchers with tools that immeasurably enhance the single-discipline approach that has dominated scientific research for many years. Indeed, the very fact that all of this wide-ranging information is now available on a single inexpensive piece of plastic is actually fostering new scientific discoveries.

Instead of analyzing a database through a narrow information channel typical of conventional online database access, CD-ROM and today's powerful PC's make it possible to analyze that same database right on a scientist's desktop. A CD-ROM drive provides an information conduit to the user that is at least a 1000 times greater than a typical medium speed telecommunications line (1200 baud). This allows for the use of color, windowing, graphics, and other information-intensive operations. Thus, not only can all of the data on a particular subject be made available through CD-ROM, but these data can be accessed in a way that allows the full power of today's advanced computing techniques to be applied. When one considers that this entire capability can now be made available to scientists and researchers anywhere in the world at affordable costs, one begins to appreciate the true power of CD-ROM to change the ways in which our global society deals with and benefits from one of its most important resources – information.

Mr. **Wise**. Thank you very much. Opening up, I have a basic question. You mentioned the agricultural census and the housing survey. Where would that be available?

Mr. **McFaul**. OK. The Census Bureau has placed the agricultural census on their test disk No. 2 which contained those data bases plus many others. They made several hundred copies of this disk and I believe the Government Printing Office rode the contract—the mastering contract for this disk and made an additional 1,500 or 1,600 copies, one for each Federal depository library. So, one could actually go into one of the FDL's around the country and if they had the CD-ROM reader—approximately 40 percent of them do—could read that information right from a PC.

Mr. **Wise**. I'm thinking of the Kanawha County Public Library which is the county library system which is our FDL. Today, how expensive is it for that library to have this operation, this CD-ROM reader?

Mr. **McFaul**. Well, again, you need a PC. So that could be a $2,000 item. The street price is in that ballpark and the CD-ROM reader would be an additional $500 or $600 to add to that and that's all you need to access the disk. I think the Census Bureau is selling this particular disk—if the public were to buy it—for $125.

In some cases, the scientific agencies are making disks and giving these away to selected researchers. So it depends. The prices of the commercial disks—they're all the way from $49 to several thousand dollars for some of the high value-added disks, ones that the vendors feel they have added a whole lot of value to and in most cases, indeed have.

So, the price range is quite large on the commercial product side. The delivery system, $2,500—a ballpark price that's reasonable.

Mr. **Wise**. As far as preparing the data to go on a disk, how complicated is it? Do you need to have one agency in charge of the technical work or can each agency learn on its own?

Mr. **McFaul**. As it's turned out, most agencies are learning on their own. It's not that complicated. As a matter of fact, the industry by virtue of something called premastering work stations, has made it a fairly straightforward operation to organize your information, be it textual, images, display graphics, or whatever. You can do all that within your organization now with tools that are available from industry and then create the final image, if you will, of your CD-ROM disk, place it on a magnetic tape and send it off to a mastering plant.

Mastering plants are a fairly capital intensive operation, typically involving a $5 to $10 million clean room-type facility. There are a dozen of those around the country that typically will accept tapes and make them into CD-ROM disks, and send them back to you typically within 1 week to 2 weeks. They can do it overnight if there's a need for that turnaround.

So, to answer your question, yes, agencies can do it on their own. The technology is not that complicated and many agencies are doing it. We and about a dozen other agencies in the Washington area have the ability to do this premastering or data formatting within our own organizations.

The coordination function of an organization like SIGCAT fosters cooperation between agencies such that disks that are being made could be made with something I refer to as the synergy of CD-ROM. This synergy is simply the ability to place data bases from differing agencies on the same disk and allow different perspectives of the same issue—an environmental issue or a science issue, regulatory issues, whatever. Because we can hold so much data on these disks we can effectively accommodate major data bases from different agencies.

We've done that. As a matter of fact, on one of the disks we're now in the process of making at the USGS, we're placing two different disciplines of data—we're placing sonar and radar data from two different groups in a survey that never really got together before because the data bases were scattered in mainframes or large computers. We're placing both of those with the same geographical area, in this case Puerto Rico, on the same disk, allowing researchers now to take a radar view of Puerto Rico, if you will, and a sonar view of that same area.

So, I think the coordination function between agencies could be enhanced by having some group, committee, or whatever, to provide a clearinghouse function to perhaps enhance the synergy that's possible with this technology.

Mr. WISE. Following up on that, the technical standards for CD-ROM have already been established, but does the Government need to set standards for data indexing, search software, and for data formatting? Of course, as a followup question to that who sets the standards?

Mr. MCFAUL. That's a rather interesting question.

Mr. WISE. How much coordination among Government agencies—I understand the private sector's doing what it does but—how much coordination among Government agencies is there and does there need to be more or is each agency going off on its own?

Mr. MCFAUL. Well, I'd like to think that SIGCAT is preventing some of that. At least, we're meeting once every other month. We used to meet monthly. We pull several hundred people together, representing again a cross section of 300 different Government organizations, to at least share and to become aware of what projects are going on in other agencies so people don't reinvent wheels any more than necessary.

That could be extended I think to a perhaps more formal body—just thinking out loud—and the search software, the indexing software, is a big issue because the private sector really does have the best answer in that area. They have developed some very, very powerful retrieval engines.

All of the ones we've been using—the one you saw here being used with this full text are a commercial product. We went out on a competitive bid and acquired that particular product and used it with our disk and I think that's the case for most high performance products where you have this large amount of text you want to search very quickly.

There may be a need or a use for perhaps a low end, a "bread and butter" retrieval capability if you will, that could be developed or perhaps already is developed and is in the public domain somewhere. I'm not aware of one specifically but let's say there were one available that would do some basic full text retrieval that would give the Government the ability to publish its textual information. An index could go out with the disk such that users could acquire a private package to use with that disk that already has the index and the text on it.

So, the final end user interface could very well be handled by the private sector. The Government puts everything else on the disk, that is, makes the disk, with the index.

Mr. **Wise**. What I'd appreciate is if you would think some more on what kind of standards or whether or not there needs to be a more formal procedure for setting standards at the Government level, at the agency level. If you have some ideas, if you'd respond in writing, we'll leave the record open because I think that's going to be an area that we need to be looking at more and more, is making sure there is that coordination. [Material referred to found in app. 8.]

Mr. McCandless, questions?

Mr. **McCandless**. No, Mr. Chairman. This is way over my head. I am still working on a Smith Corona typewriter. [Laughter.]

Thank you.

Mr. **Wise**. Two weeks ago we had a breakdown of all the computer equipment in the office. I was the only one who remembered—it was kind of like finding a rubber dinghy down in the basement of our office—I remembered somebody put a Smith Corona down there. That is what we cranked our statement out with. I have ordered since then that a nonelectric, non-self-correcting, nondigital readout typewriter be always available for these kind of emergencies.

Mr. McFaul, I want to thank you very much for the time you have taken. You set the stage well for this. What we will do is to grant a couple of minutes recess while you break your equipment down. I understand you need to be leaving. We want to thank you very much for bringing it over.

The committee will stand in recess for 3 minutes or however long it takes Mr. McFaul to break his equipment down.

Mr. **McFaul**. Thank you. I appreciate the opportunity.

[Recess taken.]

Mr. **Wise**. The subcommittee will come back to order. The hearing will resume.

We have now seen the possibilities. We will hear about our ability to implement them. We have a panel of professionals in the library service. On our panel we are delighted to see Harold [Hal] Shill, Evansdale librarian and associate professor of library science from West Virginia University, representing the West Virginia Library Association and West Virginia University Libraries. Hal, good to see you again.

We also have Nancy Kranich, director of public and administrative services from New York University Libraries, representing the American Library Association; D. Kaye Gapen, dean of libraries, University of Wisconsin, representing the Association of Research Libraries; and Nicholas E. Mercury, director of information services, System Planning Corp., representing the Special Library Association.

Your prepared statements will in their entirety be made part of the record, so if you would care to summarize, that would be helpful.

At this point I would ask all of to you stand and be sworn.

[Witnesses sworn.]

Mr. WISE. Hal, would you like to start off?

STATEMENT OF HAROLD B. SHILL, EVANSDALE LIBRARIAN AND ASSOCIATE PROFESSOR OF LIBRARY SCIENCE, REPRESENTING THE WEST VIRGINIA LIBRARY ASSOCIATION AND WEST VIRGINIA UNIVERSITY LIBRARIES

Mr. SHILL. Thank you, Mr. Chairman.

As Mr. Wise stated, I am Hal Shill, head librarian at West Virginia University's Evansdale Library, and also Federal relations coordinator for the West Virginia Library Association.

It is a pleasure to be here with you this morning. The subcommittee's investigation is a very timely one because we are moving rapidly into an era of electronic information dissemination. One of the facts which I discovered while preparing for my testimony is that while the production of printed products by the Government has been reduced from about 16,000 to 12,000 in the 1980's, there are also about 7,500 electronic products in existence.

This is something that we are seeing in the private sector as well, a migration away from the traditional print resources and into either a dual format or exclusive access in electronic format.

The perspective that I bring, I think, is a fairly important one here. I am both an intermediary and a user of Government information. I am also a librarian in a research library which both serves the research programs of West Virginia University and has a very important role in economic development in the State of West Virginia. I would like to talk in particular about some of the uses that we make of Government information products at my own library and some of the plans that we have for the future, and if time allows, share a few of my ideas on policy needs and policy apparatus.

The West Virginia University Libraries are the regional depository library for the State of West Virginia. We receive everything which is disseminated through the depository library program. We provide a real value in this, as do the other depositories, including Kanawha County, which you mentioned earlier. That is of geographically dispersed local access with expert assistance present in the library to aid people who wish to access Government information through the depository library program.

We are a full depository, as I mentioned. We provide access through the monthly catalog in printed form. We also have access to machine readable versions of it through several of the commercial data base services.

The WVU libraries are also an ERIC depository. We receive the full Educational Resources Information Center collection on microfiche, which is a unique resource that many of you may be aware of, providing access to educational information which is not available elsewhere. It includes testimony before congressional committees, possibly including this one. It also includes reports of county school boards, studies of State agencies, and so on.

There are more than 300,000 documents in the ERIC collection right now and we do provide access to them in microfiche format. We have reader printers where people can make copies. We have assisted several of the local school districts in getting access to the ERIC collection by getting their own copies of the indexes and ordering individual documents when they wish. This is another one of our functions, assistance in getting information and referral.

The third resource that we have, which I think will be addressed in the next panel, is a large part of the NTIS collection, the National Technical Information Service. We receive about 20 percent of the NTIS documents, about 75 percent of which originate in the United States, about 25 percent of which originate in foreign countries. These are mainly in energy and coal-related areas. We have 31 areas which fit within our profile.

We provide access to that. We have heavy use among small businesses and the Morgantown Energy Technology Center. We provide commercial access online through commercial data base vendors as well.

The chairman, I know, is interested in methanol fuels. Last year I did a search for Senator Rockefeller on methanol and discovered that there are 57 citations on methanol in the NTIS data base, many of which originate in West Germany where, apparently, a lot of research is being done in that technology, too.

We are also a census depository and a census affiliate. We provide access to the printed volumes of the U.S. Census, including the State by State breakdowns of the census of agriculture, the census of population, the census of housing, retail trade, and others. We provide expert assistance in accessing them. We are also able to access them online through some of the commercial services.

We are moving into the CD-ROM world ourselves right now. Another one of my hats is that of chair of our data base services committee, which is in charge of long-range planning in this area. We are testing the ERIC data base version from one commercial vendor right now, and we expect to be adding several others in the very near future. We have received census test disk No. 2 from the U.S. Government as well, and we are hoping to very soon acquire the software to be able to access that. So we are moving rapidly into the CD-ROM world, and I expect it will have a profound impact on the nature of reference service.

I might add that one of the other roles which we see libraries playing as we move into this world is training people to become proficient users of information in electronic format. We have a very active bibliographic instruction program in my own library which has taught people to use resources traditionally in printed format. We are moving into teaching data base searching.

We have done data base searching demonstrations as part of this program for the last several years, and we anticipate doing a lot of direct end-user training as well as group training with CD-ROM products. We see our role as that of preparing people to be efficient accessors and users of information in their careers.

The policy needs are many in this area. One thing which has struck me in testimony several times before other congressional committees is that there are many different facets of information policy. We have telecommunications policy, privacy policy, copyright policy. We are looking at dissemination policy, collection policy, science policy, and many others, and many different parts of the Congress are looking at this from one particular perspective.

I would like to urge the committee to take a look at information dissemination as part of a more global package including the collection, the indexing, the archiving, and the dissemination of Government information. Access is particularly important. It has multiple components including intellectual access. Mr. McFaul talked about the space taken up by indexing on the CD-ROM disk that he was demonstrating. That is absolutely crucial for being able to find information, that it have high quality indexing.

Physical access is something that libraries provide through their geographically decentralized locations, being closely accessible to many citizens who may not have the hardware or the technical expertise to do searching for themselves or can learn it with assistance from a librarian.

The financial aspect is also very, very important, that we make it as accessible as possible at the least possible cost to as many individuals as possible.

Another thing which I have learned in previous testimony is that many different countries around the world have information policies which are more fully articulated than our own. We have a number of minipolicies, which I have alluded to a little bit earlier, but we do not have anything which we can put our hands on as a coherent national information policy per se.

I would suggest that the new White House Conference on Libraries and Information Services, which hopefully will be funded for 1990 or 1991, would be an excellent vehicle for making recommendations for information policy as we are moving more and more into the electronic era.

On the policy apparatus, a lot of what you want as far as apparatus is concerned depends on what you wish to have. Do you wish to have a proactive information policy? Do you wish to have one which focuses primarily on information management or the simple act of dissemination per se? My preference is very strongly for a proactive information policy like the Japanese have used through their Japan Information Center of Science and Technology, which has very actively collected, translated, indexed, and disseminated information to identify users.

The Soviet Union also has an active policy in that area, and I was able to get a little sense of this when visiting in one of their major research libraries last summer in Leningrad.

I don't see an agency right now with which I feel very comfortable having a leading role in the dissemination and development of policy on information. The National Commission on Libraries and Information Services has a mission in the area, has made numerous recommendations in the past, some of which have been implemented. It is a very small agency, though, and without enforcement powers.

The Office of Management and Budget is certainly large enough and has the regulatory power to play a major role in this area. However, my experience with OMB, and that is primarily in the context of the NTIS privatization controversy, has been very, very negative, where, rather than being a positive proponent of a dissemination policy which would really help U.S. industry be economically competitive and help our university researchers, OMB has worked more to inhibit that kind of access, to impair it. I have been rather discouraged with the OMB.

The most effective agency that I have seen over the last 25 years has been the U.S. Congress, which has provided policy outlines in a number of these subareas and has given mandates to agencies which are responsible for the existing dissemination programs that we do have.

In closing, I would like to urge that the committee focus its attention on the whole area of information policy. It is not simply dissemination per se but the collection, preservation and dissemination of information. We need a coherent policy addressing this. We are no longer in front of the rest of the world. We are in a very competitive environment, and as we see Europe moving toward unification in 1992, we are no longer the rich Nation which can afford to go its own way. We have to take a look at some careful coordination of national policy.

Thank you.

[The prepared statement of Mr. Shill follows:]

Testimony of

HAROLD B. SHILL, Ph.D.

Evansdale Librarian and Associate Professor
West Virginia University
and
Federal Relations Coordinator
West Virginia Library Association

on

Electronic Dissemination of Information
and
Federal Information Policy-Making Structure

Before the

Subcommittee on
Government Information, Justice and Agriculture

Committee on Government Operations

U.S. House of Representatives

May 23, 1989

Thank you, Mr. Chairman and Members of the Subcommittee, for inviting me to testify before you today. I am Harold Shill, Head Librarian at West Virginia University's Evansdale Library and Federal Relations Coordinator for the West Virginia Library Association. My library supports the research, instructional and service missions of my institution's programs in agriculture, engineering, education, forestry, social work, physical education, art and theater. We will also directly serve the College of Minerals and Energy Resources once that unit is moved to a new building nearby in 1990. We also actively support a number of economic development initiatives in West Virginia.

As a Federal Relations Coordinator since 1983, I have also gained a growing understanding of our public, school and special libraries and the special role each type of library plays in our societal information infrastructure. American libraries have made, and continue to make, an incredible variety of contributions to societal well-being and economic advancement. Each type of library uses government information in ways responsive to the needs of its primary clientele, and the ready availability of that information through the Depository Library Program and other Federal initiatives has been a major factor in the historical success of American libraries.

The Subcommittee's hearings on Federal information dissemination policies and practices are extremely timely. We have been undergoing an incremental transition from print-based information systems to electronic systems in the Federal Government and in other institutions, both public and private. However, there is no clear statutory guidance for agencies making that transition. As a result, Federal agencies are not always certain whether to follow print-era statutes or policy directive from the Office of Management and Budget (OMB) in developing electronic-era information programs.

There are also a variety of statutes and regulations in place which function as mini-policies affecting certain aspects of information collection, storage, indexing and dissemination. This category includes FCC regulatory decisions in the telecommunications area, technology transfer policies, postal revenue forgone subsidies for certain non-profit organizations, copyright policies, privacy legislation, and computer security statutes, among others. Thus, although we lack a true national information policy, these provisions collectively amount to a de facto policy structure which has been developed piece by piece, but without careful scrutiny of their overall impact.

The Subcommittee has asked witnesses to focus on the Freedom of Information Act, electronic dissemination of information, and the appropriate governmental apparatus for information policy decision-making. I shall defer on the Freedom of Information Act to others with greater expertise, though I would like to state that libraries do serve as important sources of information for filing FOIA requests and do initiate many requests themselves. Instead, I should like to focus on electronic dissemination, policy-making locus and policy content issues.

My testimony will focus on five areas: 1) the types, importance and uses of Federal information; 2) the role of libraries in providing access to Federal information; 3) the impact of electronic dissemination of information (EDI) and the resulting issues it raises; 4) past and current efforts to develop an information policy apparatus; and 5) specific recommendations concerning information policy and a desirable policy-making structure.

Federal Information: Types, Importance, Uses

Federal information comes in many forms and meets the needs of many very different user groups. Statistical data is collected by agencies as diverse as the Census Bureau, National Center for Educational Statistics, Bureau of Labor Statistics, National Center for Health Statistics, Federal Bureau of Investigation, National Agricultural Statistics Office, and Patent and Trademark Office. Although each organization has its own distinctive group of primary users, there is also considerable overlap in data use by government organizations, businesses and university researchers. Researchers studying the impact of residential mobility on crime rates, for example, would need both population statistics compiled by the Census Bureau and crime statistics gathered by the FBI. The West Virginia University Libraries provide complete national and state-by-state census records going back to 1790, the FBI's annual Crime in the United States report, the National Center for Health Statistics' annual Vital Statistics of the United States (homicide data) and other printed reference sources for this type of data. In addition to being useful for this type of question, government statistics are also essential for marketing research, health policy planning, trend analysis, and general planning activities of local, state, regional and national governmental bodies. This data pool, and its integrity over time, are critical for each type of activity.

Textual information gathered by government agencies is likewise made accessible through libraries. As a regional depository library, the West Virginia University Libraries receive all publications distributed through the Depository Library Program, which is administered by the Government Printing Office. This includes materials as diverse as agency studies, Congressional hearings and reports, directories, and environmental impact statements. Approximately 50 percent of all Federal agency publications have been made widely available through nearly 1400 depository libraries and other non-depository libraries which have purchased them, although that percentage has slipped somewhat in recent years. Nevertheless, it is this broad access to government information which, by greatly facilitating use of government-produced data and helping ordinary citizens keep Federal officials accountable, which has led some to call the DLP an "information safety net."[1]

Many agencies also disseminate or sell textual reports outside the Depository Library Program. The National Technical Information Service (NTIS) makes available for a fee technical reports completed by agencies, by organizations working under contract, by foreign governments and firms, and by some corporations. The WVU Libraries provide access to approximately 20 percent of the NTIS collection, concentrating particularly on coal and energy-related research reports. The Environmental Protection Agency, National Aeronautics and Space Administration, Department of Education, Department of Commerce, Department of Energy, Department of Agriculture and Defense Technical Information Center (DTIC) also have their own dissemination programs, with libraries providing repeated, local access to materials most relevent to their own clienteles.

A third type of information, bibliographic retrieval data, is critical for anyone doing research in education, agriculture, medicine, any technical engineering area, water resource planning. In-depth indexing is indispensable for determining what research has been done, what the law may be, or where certain information may be found. Major bibliographic tools produced by the U.S. Government, with their machine-readable counterparts in parentheses, include Current Index to Journals in Education (ERIC), Resources in Education (ERIC), Bibliography of Agriculture (AGRICOLA), Index Medicus (MEDLARS), Government Reports Announcements and Index (NTIS), and Selected Water Resources Abstracts (SWRA), among others. In addition to providing the ability to identify reports or data compiled under government auspices, these indexes and abstracting services also lead investigators to journals and other research reports produced by universities, non-profit organizations and for-profit publishers. These indexes and abstracting services are among the most heavily-used resources in any university, governmental or corporate library, and their availability in print format is also a "safety net" for students, faculty, small businesses and citizens who cannot afford an expensive online search.

Electronic Dissemination of Information (EDI)

The revolution in computer and telecommunications technologies of the past two decades has brought with it enormous gains in productivity, new opportunities, new information services and new threats to the underlying value of equal access to information. According to the 1988 Statistical Abstract of the United States, 3.075 million personal computers worth an average of $2983 each were shipped by manufacturers in 1986.[2] The percentage of schools with microcomputers rose from 18.1 percent in 1981 to 95.6 percent in 1986.[3] The number of databases and online services increased, respectively, from 400 and 59 in 1979/80 to 4062 and 600 by January 1989; in addition, 75 "gateways" between online systems had come into existence by the latter year.[4] Enrollment in DIALOG's Classroom Instruction Program, a discount-based searching system for teaching end-users, increased from 900 educational institutions in January 1986 to nearly 1600 by April 1987.[5] Online searches performed for library patrons at West Virginia University's Evansdale Library increased from 110 in 1981-82 to 497 in 1987-88.

At the same time, public, school and academic libraries have actively integrated electronic technologies into their service structures. Online public access catalogs (OPACs) began appearing in larger libraries in the mid-1970's, and advanced versions of these earlier prototypes now provide the ability to identify library holdings, determine the status of a book or journal, use sophisticated Boolean searching capabilities, and exchange electronic messages with the library from remote locations. In addition to using local area networks, some libraries, such as the University of California at Berkeley, now use broadband radio frequencies for user-library communication.

Online searching of databases from remote sites had become a standard feature of library service in special and larger academic libraries by the early 1980's. Institutions like Texas A&M were training end-users to search databases offered at reduced rates after 6:00 p.m. as early as 1984. Public access CD-ROM workstations were mounted in some libraries in 1986, though CD-ROM really began to "take off" in the second half of 1987 and early 1988. Ohio University saw the number of searches performed by end-users in 14 CD-ROM databases increase from 500 per quarter to nearly 2000 per quarter within one year after the service was introduced, thereby necessitating double-staffing of reference librarians for user assistance on weekday afternoons and Monday nights.[6] Some libraries, such as Arizona State, and Georgia Tech, and Carnegie-Mellon universities, have also loaded magnetic tapes of databases into their online catalogs, thereby making them accessible to anyone searching the catalog from either a library terminal or a remote terminal.

In addition to these innovative uses of new technologies within individual libraries, groups of libraries have utilized new technologies creatively to enhance resource sharing. The national OCLC network in Columbus, Ohio, now contains more than 17 million records of books and journals held in libraries throughout the country. The availability of these records in machine-readable form has virtually eliminated cataloging backlogs, since libraries can order their own records directly from OCLC without duplicating the cataloging efforts of other libraries, and greatly expedited interlibrary loan activity. The West Virginia Library Commission has used microwave technology to link a network including most public libraries in the state and some academic libraries. Pennsylvania and Maryland have developed their own CD-ROM databases of holdings in academic, public and school libraries, and CD-ROM copies have been distributed to libraries throughout each state.

These technological advances have occurred, however, within a rapidly-evolving international information environment. American research now comprises only 20-25 percent of the world's output, so we are compelled to pay attention to developments abroad in order to remain competitive. The online information industry has shown a clear movement toward concentration, with such major vendors as Systems Development Corporation (SDC) and Bibliographic Retrieval Services (BRS) being sold to foreign information conglomerates. Japanese and other non-American firms have secured a dominant position in the electronics and micro-electronics industries. At the same time, connect-hour and per-citation charges for many databases have increased significantly, as vendors have tried to recoup profit losses resulting from faster telecommunication speeds and citation downloading. These developments, in addition to the technological advances noted earlier, help to define the information environment in which the U.S. government must make decisions on the specific issue of electronic dissemination and other, broader issues of information policy.

What have Federal agencies done to utilize new information technologies to promote public access? The record is uneven, with some impressive accomplishments on record while some major opportunities have been missed or delayed in implementation.

First, numerous Federal agencies have made use of major database vendors, such as DIALOG and SDC (now Pergamon ORBIT/Infoline, a Maxwell Communications subsidiary), to enhance access to such major databases as AGRICOLA, ERIC, NTIS and MEDLINE. Fifty-one databases developed through government agencies are now available through DIALOG, for example.[7] While facilitating technical availability, however, prices for accessing these databases have sometimes soared wildly when demand has been high. The connect-hour charge for accessing the NTIS database on DIALOG, for example, has increased from $45 per hour in 1985 to $81 today. The cost of printing a full record from the NTIS database has also escalated to 65c per full record printed online and 60c per full record printed offline. At this rate, the cost of a 10-minute search which retrieved 25 citations would be $30.50, including telecommunication charges. This is expensive for students and many small businesses, and my own library's use of the NTIS database has declined as a result. Were the National Library of Medicine's MEDLINE database not also available directly from NLM, it is quite conceivable that DIALOG's pricing for that database might also be well above its current level of $36 per connect-hour, 20c per full record printed offline and 5c per record displayed online.

Federal agencies have made many imaginative uses of optical storage technologies as well. The National Agricultural Library is using optical scanners to transfer text from the printed pages of state agricultural experiment station reports onto optical disks in its well-publicized text digitization project. NTIS has made its database available in CD-ROM format through two private vendors, SilverPlatter and DIALOG, and one non-profit vendor, OCLC. The National Library of Medicine has developed the extremely user-friendly "Grateful Med" front-end searching software, which permits relatively unsophisticated end-users to search the MEDLINE database using natural language, rather than the intricate MEDLARS retrieval language. The "Grateful Med" software is available from NTIS for $29.95 per package, and it will be used as the standard searching software for WEST VIRGINIA CONSULT, a statewide medical network and training system now being developed at West Virginia University. Finally, CD-ROM versions of the ERIC, NTIS, AGRICOLA, MEDLINE and GPO MONTHLY CATALOG databases are now being offered for public sale by one particularly enterprising vendor, SilverPlatter.

While the access-promoting initiatives noted above have taken place, there have also been some significant opportunities missed. Efforts to modernize NTIS were delayed for years due to OMB's protracted effort to privatize the agency, notwithstanding five unsuccessful efforts in the early 1980's to prove that NTIS's functions could be performed more cost-effectively in the private sector and a recommendation that the organization not be privatized by Commerce's own Task Force on NTIS Privatization. Protected by legislation and a recent reorganization of Commerce's science and technology programs, NTIS is now proceeding rapidly with efforts to integrate new technologies into its operating structure and enhance access to its collection.

In 1987, the Government Printing Office (GPO) and the Joint Committee on Printing (JCP) reached agreement with sixteen agencies to include electronic databases as pilot projects in the Depository Library Program. The proposed projects were to include both online and CD-ROM formats. Due to opposition from commercial sector critics, however, the House Appropriations Committee decided to defer "without prejudice" the provision of $800,000 to fund the pilot projects in FY 1988 pending the completion of an Office of Technology Assessment report on electronic dissemination. Finally released in October 1988, that report, Informing the Nation: Federal Information Dissemination in an Electronic Age, has met with responses ranging from glowing praise to outright scorn. In addition, only five of the original sixteen pilot projects have now been funded. My own library has received Census Test Disk #2 within the past few weeks, but we have not yet acquired the dBase III software necessary for sophisticated data manipulation with this CD-ROM product. As a result of the pilot project delay, we do not yet know how effective depository libraries will be as providers of online and/or CD-ROM access. Also, the number of databases to be tested by them has been reduced by two-thirds. In this era of rapid technological advance, such a loss of two years is comparable to the loss of a decade in earlier times. We have neither learned the lessons nor reaped the benefits which might have derived from earlier distribution.

Although these few examples barely begin to tap the wide array of promising developments and opportunities missed for electronic collection and dissemination of government information, they do serve to illustrate some of the many issues raised by electronic information systems. Those issues include:

1. Do existing statutes requiring dissemination in printed formats apply comparably to electronic dissemination? If not, the public will suffer a huge loss in terms of access to Federal information, since the government now prints 12,000 publications and produces 7,500 machine-readable "products."[8] We can expect a continued decline in relative access as the "migration from print on paper" predicted by F. Wilfrid Lancaster accelerates.[9]

2. What constitutes "access?" Physical location? Price? Availability through widely accessible intermediaries? OMB has frequently interpreted access to mean physical availability at locations in Washington, D.C. and perhaps one or two other major cities. Our nearly 1400 depository libraries, including at least one library in every Congressional district, provide much more effective, geographically distributed physical access for the majority of our population living beyond the Beltway. Free or low-cost access facilitates use for most of our population, small businesses and

and non-profit organizations. In contrast, hefty fees tend to stratify access to government information along rich-poor lines, a result clearly incompatible with the legislative intent underlying most dissemination programs. Availability through major information providers, such as DIALOG, the National Library of Medicine and OCLC, enhances access since many libraries and private individuals have passwords or other forms of access to those systems. Selection of an obscure provider, even on a lowest-bid basis, can diminish access if few individuals will be able to utilize that service readily.

3. Are existing EDI mechanisms adequate? Should new ones be created? This question assumes that dissemination systems should be evaluated in terms of their contribution to national information access goals. It also assumes that the concept of evaluation is legitimate in its own right, that the government should quite appropriately engage in assessment and systems planning activities.

4. Should the Federal EDI role be proactive or focus on meeting minimal statutory obligations? Recent hearings by the Science, Research and Technology Subcommittee addressed Federal Information Resources Policy.[10] If information is viewed as a resource created with taxpayer dollars, there is an opportunity to develop a positive national policy stressing the use of information to promote the attainment of social, economic, national security and cultural goals.

5. What are the respective roles of the Depository Library Program, NTIS, ERIC, and other clearinghouses for specialized information, individual agencies' dissemination programs, and private information vendors? How can the unique strengths of each of these components of an effective dissemination system be blended into a coherent program maximizing access, minimizing cost and eliminating undesirable duplication?

6. What will be the "environmental impacts" of changes in current dissemination systems? What will be the costs of failures to change? Modifications in dissemination programs should be judged by their probable impact on end-users of that information, as should failures to adapt current systems to encompass EDI.

7. How can existing channels of dissemination be used most effectively? Both public and private mechanisms currently in place can be used to maximize access. Decision-makers should investigate whether these systems, including telecommunication networks, database vendors, depository programs, CD-ROM and floppy disk systems, are being utilized to their fullest capacity.

8. How can standards be developed to permit interchangeable use of different electronic dissemination systems created by Federal agencies? Should there be single standards for database structure, hardware, searching software, etc? If government information systems are ever to attain the "seamless web" status put forward in Informing the Nation, decisions to ensure system compatibility must be made soon.

9. What degree of "value added" enhancements should be provided by government agencies, private sector organizations and repositories? At what point do such enhancements create barriers to access due to their cost? Software enhancements can greatly increase users' ability to manipulate data in machine-readable form, thereby sharply enhancing the productivity of those who are able to use it. High prices for such enhancements, however, may deny access to those without extensive financial resources. The concept of a "point of diminishing returns" might be utilized to make cost-access assessments.

10. What degree of proprietary control over public domain information should be asserted by organizations providing searching software and other value-added enhancements? Some database vendors currently list such restrictions in their statements of searching terms and conditions. Care needs to be taken to ensure that a de facto copyright is not created when contracts for value-added enhancements are concluded.

Toward a Viable Policy-Making Structure

As noted earlier, the United States has a variety of information "mini-policies" rather than a comprehensive national information policy. This is the result of the diffusion of information policy-making prerogatives among many government agencies the multiplicity of information programs n existence, decision-makers' lack of a clear-cut perception of information policy as a distinct issue area comparable to environmental policy or defense policy, and the lack of strong demand from powerful interest groups for a clearly-defined national information policy.

Numerous agencies have attempted to develop information policy over the past 25 years, generally with only partial or minimal success. The Government Printing Office has been able to secure the inclusion of perhaps 50 percent of agency documents, at best, in the Depository Library Program envisioned by the Depository Library Act of 1962. The Committee on Scientific and Technical Information (COSATI), charged with the development of scientific and technical information policy, was dissolved shortly after its transfer into the National Science Foundation in the early 1970's. The Office of Science and Technology Policy (OSTP), created by the National Technology Policy and Priorities Act of 1976, has been roundly criticized by the Science, Research and Technology Subcommittee for failing to provide policy guidance.[11]

One of the more successful policy-making agencies, despite an abysmally small budget, has been the National Commission on Libraries and Information Science (NCLIS). This agency has helped to realize at least partial implementation of 62 of the 64 recommendations made by the 1979 White House Conference on Libraries and Information Services. It has also negotiated the Glenerin Declaration, a landmark, trilateral declaration of intent to maximize access to each society's information resources and to reduce barriers impairing access across national lines, with Great Britain and Canada in 1987. The Commission has drawn criticism from Congress, the library community and the press, however, for some commissioners' declarations of support for the FBI's "library awareness program."

The Office of Management and Budget has been the most visible and active agency participant in the information policy arena during the 1980's, serving as a zealous proponent of Reagan Administration efforts to reduce the Federal role in domestic affairs and privatize government functions wherever possible. Through a number of policy circulars and bulletins, most notably Circulars A-76 and A-130, OMB has sought in the 1980's to "contract out" Federal libraries as commercial services, confine agency information dissemination efforts to the minimum effort required by statute, prevent any dissemination programs which conflict (or even potentially conflict) with services which are (or could be) offered by the private sector, place maximum feasible reliance on the private sector for dissemination, and impose user fees wherever possible. As noted earlier, OMB's dogmatic opposition has been a primary roadblock preventing earlier initiatives to modernize NTIS, and that effort to privatize NTIS continued unabated even when Commerce's own Task Force on NTIS Privatization recommended against it. That doctrinaire resistance to a proactive NTIS utilizing new technologies to enhance access to its information base culminated, in January 1988, in an effort to privatize the agency as a test for the viability of an employee stock ownership program (ESOP) in the Federal agency context. Most recently, OMB gave notice in the January 4, 1989 Federal Register of its intent to extend the policies established in Circular A-130 to electronic dissemination of information. This policy notice is being reconsidered after extensive criticism from the library community, information users and Members of Congress.

Perhaps the most successful maker of information policies in the past twenty-five years has been not an Executive agency, but the U.S. Congress. Among other initiatives, the Legislative Branch has produced the Freedom of Information Act and its 1974 amendments, the National Science and Technology Policy and Priorities Act, the Stevenson-Wydler Act, and the Japanese Technical Literature Act. Congress has continued its support for the Library Services and Construction Act, the library portions of the Higher Education Act, the postal revenue forgone subsidy, the Medical Libraries Assistance Act, the Library of Congress, the national libraries of Medicine and Agriculture, the Government Printing Office, and the Depository Library Program. The Congress has successfully resisted Reagan Administration attempts to privatize NTIS and zero-fund most Federal library programs, thereby preserving the existing collection/dissemination infrastructure for government information reasonably intact for the current Subcommittee review. By far, Congress has had the greatest positive impact among governmental entities on information policy in the 1980's.

Recommendations

The United States stands virtually alone among the major industrialized nations in lacking a clear national information policy. Japan has very carefully cultivated its own information resources and foreign scientific-technical information through the Japan Information Center of Science and Technology (JICST), an agency which has diligently acquired, translated, indexed, and disseminated technical information to investigators in Japanese industrial and university research centers. The Soviet Union, France, Brazil and Canada all have national information policies. With European integration looming closer in 1992, information barriers between the thirteen nations involved can be expected to fall, thereby enabling them to use each other's information resources more readily and making them more formidable competitors on the international scene. A similar effort to define a clear-cut information policy serving national goals is critically needed, particularly with the United States producing a diminishing percentage of the world's research and information impediments between the major European powers likely to crumble soon.

An initial step toward development of such a policy would be a shift away from the excessive concern with records control underlying parts of the Paperwork Reduction Act, OMB Circular A-130, and several National Security Council decision directives issued this decade. This statement is not meant to de-emphasize the entirely appropriate efforts to minimize unnecessary respondent burdens, reduce waste and eliminate duplication mandated by these initiatives. However, such information management concerns should be one facet of information policy, not its primary objective. Instead, information policy should focus on ways in which information resources---both public and private---can be most effectively utilized in the pursuit of national goals.

Such a perspective would emphasize the use of information, and the public and private infrastructures supporting its collection and dissemination, as a resource to be carefully cultivated for the attainment of selected national goals. Such goals might include improving education at all levels, promoting research addressing national needs, fostering regional economic development, enabling public and private sector decision-makers to make informed choices, enhancing citizen participation in public affairs, and making widely accessible information on government decisions necessary to ensure official accountability. So far as I am aware, no effort to formulate such an overview and address the role of information in realizing national goals has been undertaken in recent years. A bill to create an Information Age Commission was introduced in Congress several years ago, but I do not believe it advanced beyond the committee stage. Perhaps a short-term national commission, something similar to the National Commission on Excellence in Education, might be needed to bring popular attention to the importance of information as a resource and to identify steps which might be taken to enhance its collection, dissemination and effective use.

In order to achieve the broader, long-range goals noted above, a series of short-term objectives for information policy must be defined. Such objectives could include:

1. Access---this would include physical, financial, technological and intellectual access. Consistent, comprehensive indexing is required to attain the objective of intellectual access, while local availability, free of low-cost use, and availability through widely-used dissemination channels would be needed to meet the first three sub-objectives.

2. Dissemination---information which is needed by specific sectors of the population or by the general public should be disseminated through recognized, low-cost channels in multiple geographic locations. Libraries are a particularly important institution for ensuring equitable dissemination.

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3. Selection---what information is needed to pursue national goals? How effectively do current government and private sector programs provide that information? Should data from the National Organization for the Reform of Marijuana Laws, for example, be made more widely available through government or private data sources?

4. Preservation---what steps should be taken to ensure the preservation of information which is collected only in machine-readable form and is of legitimate interest to scholars and the general population. The American Library Association is currently a party to a suit to assure preservation of the National Security Council's electronic "prof notes," compiled as decisions leading to the Iran-Contra controversy were being made. Notes on the Reagan-Gorbachev summit conference in Moscow this past summer would be similarly worth preserving. Longitudinal data in machine-readable format must also be preserved if trend analyses of U.S. social developments are to be continued. Careful decisions involving information users, as well as the agencies themselves, must be made before electronic data is erased.

5. Compatibility---the development of CD-ROM technology has raised the issue of standards to new prominence. Buyers wish to be able to use various vendors' database products, including those produced by the government, on the same hardware and with the same searching software. Potential purchasers must look very carefully at system compatibility now. The issue of data exchange between different vendors' online library systems (online catalog, circulation system, acquisitions, serials, etc.) has also become critical as libraries attempt to utilize resource-sharing arrangements more actively and abandon the outdated notion of a library as a physical entity, rather than a node in a larger communication system.

6. Access to foreign information---the Japanese Technical Literature Act was a small initiative, but an important precedent, in defining access to certain types of foreign literatures as a national objective. Given our competitive global environment and the growth of significant research enterprises in other countries,

it would appear prudent to identify types of literatures we should acquire, nations performing leading-edge research in those areas, and channels which should be used for dissemination and preservation. A major private initiative, the Japanese Technical Information Service, was discontinued after a two-year existence and widespread publicity because it could not make a profit. We face a growing need for access of various types of foreign literatures to keep abreast of new research and other developments, so this objective is also important.

7. Collection---once needed information has been identified, how should it be collected? In print format, on floppy disks, by electronic file transfer? How much effort should be made to produce new information sources as well as to provide greater access to existing ones? Which agencies will collect which data? How effectively is the private sector collecting needed data and making it accessible? Which organizations should collect data? From which sources or samples of the population?

8. Technological advancement---should efforts be made to a) develop and b) disseminate new technologies to enhance access to information and use of it? It is my understanding that the French telephone system has made videotex technologies available in every home having a telephone in that country. Does the United States have a similar interest in seeing information technologies widely disseminated? Should telecommunications policy facilitate the use of information technologies through time-sharing networks and other mechanisms which may emerge in the future? Should efforts be made to speed the development of new technologies as has been done with Sematech for micro-electronics or the plans for a Superconducting Supercollider?

The next existing opportunity for a systematic overview of EDI policy issues and information policy structures should occur when the Second White House Conference on Libraries and Information Services occurs in 1990 or 1991. Both

Houses of Congress have voted to authorize that such a conference be held before September 30, 1991, and President Reagan signed the authorizing legislation. However, the estimated $6 million needed to hold state- and national-level conferences has not yet been appropriated, though White House and other appointments to the WHCLIS-II Advisory Committee have been made. This conference would provide the opportunity for electronic dissemination and information policy issues to be explored in depth and for a consensus on national goals to be developed. However, since that conference will be held one or two years in the future and some information policy issues must be addressed now, it is vital that the Subcommittee and other Congressional units not delay in imposing their preferences on information policy legislation and regulations which should be reviewed in the current session. To do otherwise would create a policy vacuum at a time when conscious, well-considered guidance is needed.

Questions of information policy structure, like those of policy direction and content covered in the preceding paragraphs, are crucial for determining information policy outcomes. The current mini-policies which constitute a de facto national information policy are the result of specific pieces of legislation, regulatory decisions by Executive departments and independent agencies, funding choices made by the Executive Branch and Congress, bureaucratic decisions, and Congressional oversight. Though priorities are implicit and sometimes explicit in the policy choices made, there is no well-defined structure for information policy-making comparable to those which exist for environmental policy, defense policy and agricultural policy.

Among the major acts of legislation which define information policy today are the Printing Act of 1895, the Depository Library Act of 1962, the 1966 Freedom of Information Act and its 1974 amendments, the Copyright Act and its 1976 amendments, the Paperwork Reduction Act of 1980, the National Science and Technology Priorities and Policy Act of 1976, and the Japanese Technical Literature

Act of 1987. The following changes in existing legislation are needed:

1. Depository Library Act---amend to require Executive agencies to make all publications, including those issued only in electronic format, available to the general public through the Depository Library Program. It is critical that information in electronic formats be included in the depository program, since an increasing percentage of government information products can be expected to be available in this format only in the future.

2. Paperwork Reduction Act---this act has been cited by OMB as its source of statutory authority for privatization of government information programs and for the imposition of user fees. It does not appear from a reading of the Act that this was the intention of Congress. The Act should be amended during the reauthorization process this year to minimize the application of user fees and to make clear the circumstances under which privatization is appropriate and limit uncritical reliance on the private sector. OMB Circular A-130 and other OMB circulars and bulletins which have cited this legislation for imposing user fees (A-25) and contracting out government libraries (A-76) should be scrutinized closely during reauthorization

There is, at present, no agency in the Federal Government better equipped to formulate information policy than the U.S. Congress. NCLIS has the potential to play such a role, but it lacks the budget and enforcement powers necessary to implement and monitor new information programs. OMB possesses the necessary budget and enforcement powers to function in this capacity. However, OMB has consistently pursued policies which are the antithesis of a proactive, forward-looking national information policy during the 1980's and has had, on balance, a harmful effect on efforts to enhance access to information and utilize it as a valuable national resource. OMB's interpretation of legislative intent has also, on several occasions, been seemingly inconsistent with the desires of those who framed the legislation.

In short, there is not at present any agency which possesses both the financial resources and positive outlook necessary to formulate and monitor an information policy which will be responsive to present and future societal needs. It is my hope that the Second White House Conference on Libraries and Information Services may make specific recommendations to strengthen existing agencies or develop new ones to perform this role. In the meantime, it is imperative that Congress vigilantly monitor Executive agency actions in the information area and make certain that legislative intent is clearly defined in the Paperwork Reduction Act and other pieces of legislation. I hope that Congress will recognize the opportunities and risks which are evident as we move rapidly into the electronic information era and take a positive, proactive approach toward making information serve national purposes.

Thank you for the opportunity to share my perspectives and thoughts, Mr. Chairman. I shall submit a letter for the record later with more detailed recommendations concerning particular pieces of legislation. I shall also follow the Subcommittee's deliberations and new developments in the EDI area with keen interest. I shall be glad to answer any questions you or other Subcommittee members may have.

NOTES

[1] Peter Hernon and Charles R. McClure, "GPO's Depository Library Program: Building for the Future," *Library Journal*, vol. 113, no. 6 (April 1, 1988), pp. 52-56.

[2] *Statistical Abstract of the United States*, 108th ed. (Washington, DC: U.S. Bureau of the Census, 1988), p. 217.

[3] *ibid*, p. 135.

[4] *Directory of Online Databases*, vol. 10, no. 1 (New York: Cuadra/Elsevier, 1989), p. v.

[5] Telephone conversation with Anne Caputo, DIALOG Information Services, April 17, 1987.

[6] Nancy Rue, Robert Houdek, Timothy Smith, and Edward T. O'Neill, "CD-ROM as an Alternative: Library Experience and Future Possibilities," Paper presented at Academic Library Association of Ohio/Ohio Educational Media Library Association/ Ohio Library Association First Concurrent Conference, Columbus, OH, Nov. 4, 1988.

[7] *DIALOG Database Catalog, 1989* (Palo Alto, CA: DIALOG Information Services, 1989), pp. 5-65.

[8] U.S. Congress. Office of Technology Assessment, *Informing The Nation: Federal Information Dissemination In An Electronic Age* (Washington, DC: Government Printing Office, 1988), p. 5.

[9] F. Wilfrid Lancaster, *Libraries and Librarians in an Age of Electronics* (Arlington, VA: Information Resources Press, 1982), p. 61.

[10] *Scientific and Technical Information: Policy and Organization in the Federal Government (H.R. 1615 and H.R. 2159), Hearings Before the Subcommittee on Science, Research and Technology, of the Committee on Science, Space and Technology, U.S. House of Representatives, 100th Congress, 1st Session* (July 14-15, 1987).

Mr. **Wise**. Thank you.

The next witness will be Nancy Kranich, director of public and administrative services in New York University Libraries.

STATEMENT OF NANCY KRANICH, DIRECTOR OF PUBLIC AND ADMINISTRATIVE SERVICES, NEW YORK UNIVERSITY LIBRARIES, ON BEHALF OF THE AMERICAN LIBRARY ASSOCIATION

Ms. **Kranich**. Thank you, Chairman Wise.

I am Nancy Kranich, and I am here today to testify on behalf of the American Library Association.

Libraries have a long history of managing and providing information services to the public, including information in electronic formats. Not only have libraries forged ahead in the utilization of new information technologies, they have served as a partner with the Government in disseminating Federal information. Through the Depository Library Program, nearly 1,400 libraries have served as host institutions for distributing Government information in every congressional district.

Until now, most of the publications provided through the Government Printing Office have been in print format, but many libraries are already equipped and prepared to disseminate Government information, regardless of format, just as they have so effectively done with all of the other information they have carefully managed in recent years.

Open and ready access to ideas and information is essential to enfranchise citizens to full participation in our society. This open and ready access must not be lost when new technologies are utilized by the Federal Government. While new technologies have the potential to increase public access to information, they are also capable of providing additional barriers to citizens' right to know.

The Office of Management and Budget's Circular A-130 for managing Federal information resources fails to implement the commitment of Congress to public access. In addition, it has sharply reduced the Federal Government's efforts to collect and disseminate information to the public and has put additional burden on the public to locate and pay for information collected and organized at public expense. Not only does the circular obscure the congressional commitment to public access, it encourages the development of information products that do not satisfy the public's need to know.

In order to consider how current policies affect public access, I focused on one particular electronic data base: the USDA's EDI system. The following are just a few of the concerns raised:

One, no central Government-sponsored source lists the data base so that the public is aware of its availability.

Two, only a limited public has direct access to this privatized data base.

Three, standards are not adhered to that can streamline Federal agency efforts with data entry and access and ease public use.

Four, the price of public access has soared to at least double the cost previously charged by Government agencies. As a result, only those with the ability and inclination to pay for access will do so.

Five, no provision is made for accumulating, archiving, or preserving the data.

Six, the private sector has no responsibility to assure at least a minimum level of dissemination to the general public. A safety net for public access has always been the Depository Library Program, assuring distribution of Government information in every congressional district. No equivalent program exists for privatized Government data.

A renewed commitment to public access in an electronic age is now needed and the American Library Association is eager to work closely with Congress to develop information policies that will respond more effectively to the public's right to know. In order to enhance public access to Government information, the American Library Association has called upon this subcommittee to take 14 specific actions. Among them:

First, reinforce and reauthorize the Paperwork Reduction Act, the Government's affirmative responsibility to disseminate Government information.

Second, bring to OMB's attention that the agency's position on privatization exceeds its statutory authority and is inappropriate for the management of Government information.

Third, review existing and proposed contracts with information vendors to assure that public access is not jeopardized.

Fourth, develop effective policies on the dissemination of information that are in the public interest, so that decisions about individual Government information products are not made on a piecemeal basis.

Fifth, share resources within the Government and promote the use of standards for data elements, search protocols, and formats. Encourage the use of the ISO/OSI standards, which are known in the Federal Government as GOSIP, telecommunications standards, and dialup access through national networks, such as the NSFNET.

Sixth, support the Depository Library Program to assure public access.

And, seventh, require that when agencies replace hard copy with electronic data, they remain obligated to disseminating that information to the public.

Thank you. I appreciate the opportunity to present ALA's views and will be happy to answer any questions.

[The prepared statement of Ms. Kranich follows:]

Statement of

Nancy C. Kranich
Director of Public and Administrative Services
New York University Libraries

on behalf of the

American Library Association

before the
Subcommittee on Government Information, Justice and Agriculture
of the
House Committee on Government Operations

on
Federal Information Dissemination Policies and Practices

May 23, 1989

My name is Nancy Kranich. I am the Director of Public and Administrative Services at New York University Libraries. I am pleased to appear on behalf of the American Library Association (ALA), an educational organization of 48,000 librarians, library trustees, educators and other information professionals dedicated to the improvement of library and information services for all citizens. Currently, I am a member of ALA's Council and Coordinating Committee on Access to Information and Chair of the Legislation Committee's Subcommittee on Government Information. In addition, I chair the Coalition of Government Information, which includes close to 50 not-for-profit groups concerned with access to public information.

As an active member of a profession dedicated to meeting the ever-expanding information needs of the American public, I appreciate the opportunity to talk with you about the concerns of librarians in regard to government information policy. Librarians have a long history of managing information. Beyond the books and periodicals we have traditionally acquired, organized, and disseminated, we have extensive experience with providing information in numerous formats ranging from electronic databases to video, audio, and film. We have also utilized new technologies to enhance access to all formats of information through the development and utilization of standards, participation in consortia and other cooperative systems, and the utilization of telecommunications networks. The machine readable cataloging (MARC) format serves as a standard for describing and communicating bibliographic information and allows for the integrated cataloging of all types of information formats ranging from computer files to videorecordings to visual materials to books and serials. Libraries were among the first institutions to adopt the international standards for open systems interconnections (OSI/ISO standards), and have played a leadership role in urging standardization and networking among libraries, educational institutions, and scientific organizations involved with the development of the National Science Foundation network (NSFNET).

To give you a better idea of the role libraries are playing in managing and promoting the use of new information technologies, let me share with you our experience at New York University. The libraries at NYU were among the first in the country to offer computerized circulation services and a public computerized catalog with 100 terminals around the campus and free dial-up access for anyone with a computer and modem. We are in the midst of implementing the ISO/OSI telecommunications protocols which will allow for computer-to-computer communication between our local system and any other system using OSI protocols.

Our first link will be with the Research Libraries Information Network (RLIN). Eventually these protocols will allow users to search other systems using the commands of their local systems.

In addition to designing innovative applications of local systems, the library has led the rest of the campus in the adoption of new information technologies and the integration of library services with other academic information initiatives at the University. Connectivity with various campus computer systems and gateways to infinite resources outside New York University has been assured through a campus network with links to national networks such as the NSFNET, ARPANET, NYSERNET, and GTE/Telenet. The Academic Computing Facility's machine-readable data files, including many government resources acquired through the Interuniversity Consortium for Political and Social Research (ICPSR), are listed in the library's catalog and available anywhere a terminal is located on campus. Librarians teach courses in the use and analysis of machine-readable data and how to directly query bibliographic and textual databases. Electronic bulletin boards and electronic mail networks are readily available and a campus video and satellite dish teleconferencing service is coordinated through the library's state-of-the-art media center. A host of computerized information services are available through the library including easy-to-use CD-ROM indexes, online interactive database services that provide access to numerous bibliographic, numeric, and full-text files, menu-driven versions of online databases for direct user searching, and library catalogs and scholarly databases. Like many other libraries, we also provide students, faculty, and the general public access to locally-created databases of community, business, labor, and other resource information.

Not only have libraries forged ahead in the utilization of new information technologies, they have served as a partner with the government in disseminating federal information. Through the Depository Library Program, nearly 1400 libraries have served as host institutions for distributing government information in every Congressional district. Until now, most of the publications provided through the Government Printing Office have been in print format. But many libraries are already equipped and prepared to disseminate government information regardless of format, just as they have so effectively done with all of the other information they have carefully managed in recent years. Furthermore, their exceptional record of developing and applying standards and sharing scarce resources can serve as a model for federal information management.

Government Information

Information about the government's own activities is of crucial importance if citizens are to make judgments about public policy. Since the earliest days of the Republic, our Federal government has made provisions to inform the public of its activities and to collect information essential to its operations. Today, it is the largest collector and largest publisher of information in the United States. The American Library Association has a long record of action in support of access to information and believes that open government is vital to democracy and that there should be equal and ready access to information collected, compiled, produced, and disseminated by the government of the United States. Librarians have resisted numerous attempts to limit access to government information. ALA has published semi-annually "Less Access to Less Information By and About the U.S. Government," which chronicles hundreds of specific attempts to limit access, including the Office of Management and Budget's attempts to reduce the collection and dissemination of federal information and accelerate the trend toward commercialization and privatization of government data. The Association has also worked closely with over 50 other non-for-profit groups to stem the trend toward government secrecy.

From its founding, the basic principle of American democracy has been informed citizen participation in the operation of popular government. Freedom of speech and freedom of the press are only parts of the larger concept. Open and ready access to ideas and information is essential to enfranchise citizens to full participation in our society. This open and ready access must not be lost when new technologies are utilized by the federal government. While new technologies have the potential to increase public access to information, they are also capable of providing additional barriers to citizens' right to know. Regardless of format, the government must assure citizens ready and broad access to information that stimulates economic, educational, scientific and technical developments while also increasing awareness of the activities of their government. The American Library Association believes that policies related to Federal information policy should recognize that:

- All government publications and government produced information be disseminated in whatever format is most appropriate for the information, most cost effective, and most useful for government agencies, libraries, and the general public;
- Comprehensive bibliographic control of all government publications be provided through nationally recognized databases and library networks;
- All unclassified government information of public interest or educational value be collected and distributed to depository libraries for free public access;
- Depository libraries be recognized and supported to operate as federal information centers for public access.

The Office of Management and Budget's (OMB) Circular A-130 for managing federal information resources fails to implement the commitment of Congress to public access. In addition, it puts additional burden on the public to locate and pay for information collected and organized at public expense. Citizens have had no alternative to buying their information from the private sector at far steeper prices than those previously charged by the government. OMB's Circular A-130 has sharply reduced the federal government's efforts to collect and disseminate information to the public and has accelerated the trend toward commercialization and privatization of government information. The Circular's emphasis on "maximum feasible reliance on the private sector for dissemination of [information] products or services" has also resulted in the discontinuance of distribution through the depository library system which assures free and equal public access in every Congressional district. Because private sector firms disseminating government data are under no obligation to make government information available to the American public at an affordable price, nor to keep that information easily accessible and readily available, a gap between information "haves" and "have nots" has evolved.

Not only does the Circular obscure the Congressional commitment to public access, it encourages the development of information products that do not satisfy the requirements put forth by the American Library Association regarding federal information resources. Last year a reporter asked us for an example of how the public's access to government information had changed because of new technologies and privatization. My review of one particular database disseminated by the private sector provided an opportunity to consider how current policies affect public access.

The USDA EDI System

The USDA's EDI system is a good example of the issues and problems librarians face in trying to provide public access to government information in electronic formats. The U.S. Department of Agriculture's (USDA) Electronic Dissemination of Information (EDI) Service offers news, commodity, economic, statistical and other reports through a computerized system operated by Martin Marietta Data Systems (MMDS) under contract to the USDA. Most of the information, which is input by various USDA agencies, is perishable and time sensitive and is released immediately to subscribers.

In January 1989 the EDI system had 34 Level 1 subscribers, 17 of which are multipliers or news services (with thousands of subscribers), while the rest are big businesses interested in commodities. Level 2 users are those to whom Martin Marietta, by contract, must give limited access at a subsidized rate. According to a General Accounting Office (GAO) Report, the recipients of these data or the system users include the public, which it defines as "agricultural information retailers, publishers, the news media, agribusiness establishments, etc., and several Department of Agriculture agencies."

While Martin Marietta and the USDA offer system support to subscribers, which are primarily multipliers, news services, and private corporations, neither have direct contact with individual end users whose access is gained through value-added vendors such as Pioneer Hi-bred International. Because information about who is using the data is proprietary, the USDA gets, at best, only limited feedback from farmers who might use the data at the retail level. Hence, it is difficult to know how farmers and the general public utilize the USDA's data.

According to a USDA fact sheet on the EDI service, "an important feature...is the automatic transmission of reports while they are still current to users virtually anywhere in the world immediately upon release by the USDA." Yet when some of the Level 1 users redistribute that data, such as Pioneer Hi-bred International, Inc., which includes it in its AGRIBUSINESS database available through Dialog, it is loaded only every two weeks. Hence, Dialog, a major source available to the general public, provides this timely information as much as two weeks late. Moreover, Dialog, in its "Database Supplier Terms and Conditions," claims that, "This database is copyrighted by Pioneer Hi-bred International, Inc. No part of AGRIBUSINESS U.S.A. database may be

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duplicated without the written authorization of Pioneer Hi-Bred International, Inc."

The information posted on the EDI system is in bulletin board format. When new information comes, the old information is superceded. No provision is made for archiving these data.

Formerly, the USDA distributed this information for free or at nominal cost through the Government Printing Office to depository libraries, farmers, and others. Martin Marietta now gets the information free from the USDA. But the contract between Martin Marietta and the USDA does not specify charges for services to the public users; rather, they are established by Martin Marietta in separate contracts with each user. Generally speaking, these charges are $45 per hour plus a minimum use/subscription fee of $150 per month for Level 1 users. (USDA providers are not charged the monthly minimum use/subscription fee.) Once this information becomes available through Dialog, one of several commercial vendors, it costs $96/hour, $.60/full record off-line and $.50/full record on-line. While Dialcom and Agridata offer cheaper rates, they are not as widely available.

At the same time that costs have increased for public access, unforeseen costs have been incurred by USDA agencies. Although Martin Marietta receives the government information for free, it charges agencies for loading and storing the data entered and retrieved from the system. If the purpose of privatizing the dissemination system is to save costs to the taxpayer, then these assumptions need closer scrutiny. If the purpose is simply to improve access and to assure that the government's own computer systems are secure, then costs vs. benefits to both the Department and the public should be reconsidered.

No matter what the rationale for privatizing the wholesale component of the USDA's information services, giving the private sector a monopoly in distributing this information has caused prices to inflate. The cost is passed from the government to host computer company to multipliers and information brokers and then to the user. By contract, Martin Marietta is prohibited from charging more than time-sharing costs to information vendors. But there are no controls over fees information vendors may charge for public access to this information, and during the three years of service, the USDA's costs for accessing this information from Martin Marietta have soared.

In the past, the nation's 1400 depository libraries have served as a safety net, providing the American people on a no-fee basis with information they need to know in order to govern themselves and to ensure political and personal independence. Once essential information is no longer published by the government, no such safeguards will exist for the small farmer lacking direct access to new technologies. The USDA has not developed policies to deal with the information poor. And Martin Marietta is not in a position to even offer general public access, let alone reduced rates. Information vendors such as DIALOG are simply not in business to provide two-tiered services. Their prices are generally half for government data provided directly to them compared to their prices for government data provided through an intermediary.

In sum, Martin Marietta has excelled in offering the USDA the electronic dissemination of information database according to the agency's specifications. Building upon the company's excess computing capacity, the EDI service has provided wider distribution of information in a timely fashion but with no foreseeable profit. Yet, Martin Marietta has not added value to the USDA data; instead, it has served as a secondary wholesaler, adding one more link in the information chain, and therefore multiplying the cost to the end user. Even if the contract is saving the taxpayer funds at the USDA, it has passed additional costs on to the consumers. By contracting out a system based on efficiency criteria, the USDA has recast government information policy in a way that has serious consequences on equal and ready access to public information.

Librarian Concerns about Access to Government Information in Electronic Format

Since Martin Marietta began operating the EDI database, several other databases have been contracted out including the Securities and Exchange Commission EDGAR system and the Patent and Trademark Office PTO system. Like the USDA system, these databases promise speed and efficiency for "public" users. But they have raised serious concerns for librarians who assist the general public with identifying and utilizing this vital information. These are the same concerns librarians voice about all information products and they include bibliographic access, physical access, standards, cost and equity, proprietary control, intellectual freedom, expert assistance, public access and dissemination, continuity, currency and scope, format, user profiles and feedback, confidentiality and database security.

Bibliographic access. There is no government-sponsored central source for listing government databases; those that exist are published by the private sector although OMB's has proposed revisions to Circular A-130 call on government agencies to produce computerized inventories of these products. Because of an ongoing debate about whether machine-readable data files and other non-paper formats are publications, the government has, until now, made little attempt to bring them under bibliographic control.

Physical access. In the case of the EDI database, there are only some 50 organizations with Martin Marietta accounts. In the case of the Securities and Exchange Commission's (SEC) database EDGAR, there are only three public reading rooms in the entire country. While librarians and library users have enjoyed broad access through both public and private sources to such government databases as Medline, ERIC, NTIS and the GPO Monthly Catalog, the bulk of government-produced electronic databases are virtually unavailable to the general public, either directly or through commercial vendors. And those that are available are often not affordable to most potential users.

Standards. For all intents and purposes, the federal government has no standards for database development — not for data elements, not for record formats (except MARC), not for retrieval protocols. Agencies are developing uncoordinated, incompatible systems and they are not working together, which results in wasteful spending. The Office of Management and Budget (OMB) is supposed to regulate information in the federal government; instead it has served as a promoter of privatization, not a coordinator of information activities at the federal level. Private sector firms are even less likely to adopt common data elements and command language.

Cost factors and equity. Many printed documents are distributed free to depository libraries, and free or at low cost to the general public. In contrast, databases are provided at least on a cost-recovery basis in order to avoid unfair competition with the private sector. When government databases are provided directly to a vendor, they cost an average of $45.70 per connect hour on Dialog, which is less than half of the $93.26 per connect hour charged when government databases are provided to Dialog by the private sector. The few government databases which can be accessed directly from the government as well as through a private vendor have an even greater disparity in user cost. For example, a recent Joint Committee on Printing report indicated that the cost to the federal government of delivering Energy Research Abstracts online to the user would be $16/hour, while access to older titles in that database offered through a commercial vendor, would be $85-$120/hour.

Proprietary control. Works created by U.S. government employees in the course of their employment are in the public domain. As a result, any individual or company is free to reproduce government documents. If they add value, they can copyright those enhancements, although not the information itself. In electronic formats, it is difficult to separate the proprietary component of a database from the public information. As a result, companies like Pioneer Hi-bred International that subscribe to the

EDI system attempt to restrict reproduction of USDA's public information that is available with enhancements in their AGRIBUSINESS database. When vendors exert proprietary control over their added value to government information, they can inhibit researchers and others from downloading and analyzing data that is in the public domain.

Intellectual freedom. The private sector has numerous examples of databases that favor certain vendors, ranging from securities investment to airline scheduling. Examples include a bond price database which tenders advantage to those companies listed first and an airline booking system which prompts travel agents to choose that company's flights over its competitors. Once government information is privatized, similar developments can occur. Government information should not be biased in any way. Providers should not be permitted to change it for their own benefit. Furthermore, contractors should not receive unfair advantage over the flow of information.

In addition, the private sector has a tendency to offer or eliminate products on the basis of the marketplace. Vendors such as Dialog are free simply to drop databases that are used infrequently. Aside from those popular government databases already widely available through private vendors, most government-produced databases are unlikely to be commercially viable. As a result, the public is threatened with the complete elimination of access to specific segments of data with limited commercial value but with substantial significance in terms of policy-making, research, scholarship and accountability.

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Expert assistance. For government-produced databases, most expert assistance is available at the agency level — with people who create the information. Unfortunately, when vendors provide information, they can tell you how to search the system using their protocols but they are rarely familiar with the content of the databases they offer. Furthermore, federal agencies that create information will often search that information on their internal databases for the public. Agency personnel help guide users to the actual information sources cited; provide the documents listed in their databases; provide additional materials; and may give suggestions and referrals to other sources because they are authorities in the particular fields under investigation. This expert assistance is very important to users as well as to librarians who are working on behalf of those users.

Public access and dissemination. OMB's policies on how to administer government information set up artificial distinctions between dissemination and access. Under the OMB guidelines, dissemination is considered the distribution of government information to the public, whether through printed documents or other media. This is the activity that OMB has encouraged agencies to contract out, thereby abrogating government's dissemination responsibilities. Access, on the other hand, is providing to members of the public, upon their request, the government information to which they are entitled under law. This is the activity that OMB officials regard as passive and can be accomplished simply by placing information in one location only.

Continuity. This concern was justified recently when the Government Printing Office's microfiche vendor defaulted and stopped production; no fiche were delivered for almost a year to depository libraries. Consequently, huge gaps developed in depository collections unless libraries searched, ordered, and paid the high price of corresponding documents from a private source. Similar discontinuities were experienced when Disclosure Information Group lost the contract to the Bechtel Corporation for Securities and Exchange Commission documents.

Archiving. Electronic technology makes it possible to erase documents long before a cumulative record can be assembled or before the historical value can be judged. Obsolete electronic equipment can also impede retrieval of government records. As more data is computerized, the public record will be imperiled unless appropriate action is taken to assure the preservation and retention of electronic records for future inquiry.

Format. Currently, electronic government information comes in formats ranging from CD-ROM to magnetic tape and from dial-up to floppy disk. Different operating systems and different software packages are used. The new Census CD-ROMs can be used with dBase III. If R-Base or another version of dBase is used at a particular library, it is simply not compatible with the Census product. Other government databases will not necessarily run with dBase, so libraries will be forced to buy not only a variety of software packages but also learn how and teach others to use them. Needless to say, these additional investments represent a significant cost-sharing for libraries as they cooperate with the federal government in providing access to public information.

User profiles and feedback. There is very little user input into how government databases are being constructed and developed. When they are privatized, it is likely to get worse. User profiles are proprietary and therefore unavailable to system designers. Furthermore, information on use and users that vendors are collecting is not analyzed for purposes of service improvement. Hence, it is virtually impossible for the government to evaluate the benefits and problems users encounter with its privately disseminated data.

Confidentiality and database security. Although librarians promote public access, they steadfastly guard against disclosure of personal data. Just because the government collects certain personal data does not authorize public access or misuse for any purpose. In addition to protecting data related to specific individuals, every attempt must be made to secure the integrity of databases from computer viruses, tampering, and any other unauthorized entry.

Shortcomings of Government Information Policy

Today, government information policy is nothing less than chaotic. There are confusing, contradictory and incoherent pieces of legislation and regulations ruling access. Moreover, the federal information system has evolved toward a cost-driven rather than user-oriented model. The public access vacuum this model has created cannot be filled by the nation's libraries, which are not funded to insure that the public has adequate access.

On a more positive note, the Congress has passed significant legislation to guarantee the public's right to know about toxic wastes in their communities. With authorization through Title III of the 1986 Superfund legislation, the Environmental Protection Agency is responsible for distributing information to the public about toxics through an online computer database, the Toxic Release Inventory (TRI). This legislation promises to be the most powerful right-to-know tool citizens have to protect public health and environmental quality in their community. The testimony delivered before this Subcommittee last month reflects how this model legislation is being implemented not only efficiently, but also in the public interest.

EPA has taken a number of steps to involve users in public access decisions. It entered into an interagency agreement with the National Library of Medicine (NLM) to develop a cost-effective, widely disseminated system that private vendors could also incorporate into their systems. EPA selected the NLM system because of its reasonable user costs ($18 to $25 per hour) and access to complementary files. It assured that the system was "user friendly" for the novice and also searchable at an expert level, and that training and outreach would be widely available. EPA has studied the potential user population and designed the system in response to user needs. EPA has the discretion to waive TRI database fees when this is in the public interest. It will disseminate the data in alternative formats through the depository library system and non-depository county libraries and its CD-ROM version is targetted as one of the five databases proposed for distribution through the depository libraries. ALA has passed a resolution indicating the importance of EPA's effort with the TRI database which will serve as a critical tool for citizens to judge at first-hand the risks posed by the use and disposal of toxic chemicals in their regions. The Association endorses EPA's program and is eager to have the database available through libraries which will promote its use.

Recommendations

Debate over the rise of electronic formats, privatization, and the like is obscuring the commitment of Congress to public access — a commitment expressed through numerous public laws that speak to the importance of government information and the dissemination of that information in carrying out agency missions and the principles of democracy and open government. A renewed commitment to public access in an electronic age is now needed and the American Library Association is eager to work more closely with Congress to develop information policies that will respond more effectively to the public's right to know.

In order to enhance public access to government information, the American Library Association is calling on this Subcommittee to take the following actions:

- Reinforce in a reauthorized Paperwork Reduction Act the affirmative responsibility to provide public access to government information.
- Bring to OMB's attention that the agency's position on privatization exceeds its statutory authority and is inappropriate for the management of information.
- Review existing and proposed contracts with information vendors to assure that public access is not jeopardized.
- Develop effective policies on the dissemination of information that are in the public interest so that

decisions about individual government information products are not made on a piecemeal basis.

- Recognize that added value is essential for using government information products. The private sector can then add additional value for specialized markets.

- Assure that government information remains in the public domain without copyright restrictions. This will permit the private sector to use the data and add value without exclusive agreements and in a competitive environment.

- Guarantee that fees charged for disseminating government information are reasonable and do not place barriers in the way of public access.

- Call for a cost/benefit analysis to determine whether existing policies have reduced paperwork or cut costs.

- Encourage the use of existing databases like the Government Printing Office's GPO Monthly Catalog Index which is in MARC format to create an inventory of information resources. That particular database is widely disseminated and distributed by both the government and private sources in print, online, and CD-ROM formats.

- Require agencies to study user populations when they are creating and disseminating information. They should not define their "public" just in terms of primary constituency of an agency's information or interested vendors or resellers, but as the general public which includes small businesses, researchers and other users that an agency may not deal with on a regular basis.

- Share resources within the government and promote the use of standards for data elements, search protocols, and formats. Encourage the use of OSI/ISO (GOSIP) telecommunications standards and dial-up access through national networks such as NSFNET.

- Work more closely with the depository library program to assure public access.

- Recognize the public's right to know in legislative actions.

- Assure that when agencies replace hard copy with electronic data, they remain obligated to disseminating that information to the public.

While we have serious concerns about the effect of privatization on the public's right to know about its government, we are not recommending that the private sector be eliminated from disseminating government information. Private sector publishers have played a vital role in the process of repackaging, adding value by supplementing or reindexing information, and marketing noncopyrighted government information to reach the widest possible audience. The diversity of channels for the dissemination of government information must be maintained to achieve equal and ready access to such information for all Americans. Rather, we are suggesting that a better balance be struck between the private and public roles in managing federal information. Perhaps it is time to consider the public impact of these policies and recognize that many recent actions have increased the burden on the public instead of reducing it.

In closing, we are eager to work with the Congress to review federal information policies and to reauthorize the Paperwork Reduction Act. Our Association will hold its annual conference next month in Dallas and we intend to use that opportunity to consider revisions of the Act and develop a position on specific recommendations for amending the law. Attached to this testimony are several relevant resolutions already passed by ALA's Council, it policy-making body. While I have not discussed the Freedom of Information Act today because other panel members are addressing this issue, I have included a resolution spelling out librarians' concerns about fee waivers for libraries.

As an associate director of a major research library, I am extensively involved with issues surrounding information management throughout the New York University community. Hence, I recognize how difficult it is to coordinate information resource collection and dissemination. Nevertheless, it is a task well worth the effort since new technologies can so effectively enhance access to information, as long as they are managed efficiently.

We greatly appreciate your holding hearings and asking for our participation. Thank you for the opportunity to present ALA's views. I will be happy to answer any questions you may have.

attachments

RESOLUTION ON LIBRARY FEE WAIVERS UNDER THE FREEDOM OF INFORMATION ACT

WHEREAS, The American Library Association has vigorously supported the Freedom of Information Act (FOIA) as a guarantor of principles fundamental to a democratic society: "the people's right to know," the free flow of ideas, and public access to government information; and

WHEREAS, The charging of fees under the FOIA represents such a substantial barrier to requesters that Congress amended the FOIA in 1986 to limit fees to only those requesters who sought information for private commercial uses, such as bidding on contracts or researching competitors; and

WHEREAS, Congress intended to provide favorable treatment to any disseminators of information, clearly defined the dissemination of information to the public as a protected use of the FOIA, not a commercial use, and clearly recognized libraries and depositories of public records as active disseminators of information: "[T]hat of course is the primary function of libraries and repositories of public documents," stated the chief Senate sponsor of the 1986 amendments; and

WHEREAS, In the modern information age, libraries serve the public by actively acquiring and disseminating information, linking the public to electronic databases, and creating public access to otherwise unavailable sources of information; and

WHEREAS, The Department of State, in particular, and other Executive Branch agencies such as the Office of Management and Budget and the Department of Justice, have interpreted the 1986 FOIA amendments exclude libraries from waivers of fees, by using excessively narrow definitions of "information dissemination" and of "educational institutions" that would allow preschools to qualify, but not major public research libraries; and

WHEREAS, Executive agencies' denial of fee waivers to libraries has a chilling effect on the likelihood of libraries using the FOIA for the benefit of the public; and

WHEREAS, Executive agencies have denigrated the very function of libraries in our democratic society by describing the role of libraries as "passive dissemination," and have further declared, in a letter from the State Department to an ALA member library, the National Security Archive: "Merely making records available to those who may request them (much the same type of dissemination that government agencies provide through the FOIA) will not itself contribute significantly to the public's understanding of the operations of government;" now, therefore, be it

RESOLVED, That the American Library Association urge federal executive agencies to follow the clear intent of Congress, to recognize libraries as educational institutions and information disseminators under the Freedom of Information Act, and to waive FOIA fees to libraries open to the public; and, be it further

RESOLVED, That the American Library Association recommend congressional action to correct this egregious misinterpretation of congressional intent, if the agencies involved do not make the necessary changes in their fee waiver practices; and communicate these concerns over the status of libraries under the FOIA to all appropriate federal agencies and congressional committees.

Adopted by the Council of the
American Library Association
Washington, D. C.
January 11, 1989
(Council Document #38)

RESOLUTION ON THE RIGHT OF ACCESS TO FEDERAL INFORMATION

WHEREAS, The right of free and equal access for all people to information and ideas is essential to a democratic society; and

WHEREAS, In recent years, a combination of specific policy decisions, the Administration's interpretations and implementations of the 1980 Paperwork Reduction Act, implementation of the Grace Commission recommendations and agency budget cuts have significantly limited access to public information; and

WHEREAS, These government policies result in privatization and commercialization of information disseminated by government agencies; curtailment of government collection of statistical and technical data; restriction of sensitive but unclassified information; restraints on scientific communication through export control systems; narrow interpretations of the Freedom of Information Act; and establishment of pre-publication review procedures for federal employees and researchers; and

WHEREAS, The American Library Association has a long record of action in support of access to information, and believes that open government is vital to a democracy and that there should be equal and ready access to information collected, compiled, produced and disseminated by the government of the United States; now, therefore, be it

RESOLVED, That the American Library Association call on the next President of the United States to take immediate executive action to:

1) Affirm a policy of free and open access to information by and about the U.S. government, consistent with the First Amendment;

2) Restrict no information solely on the basis that it is sensitive but unclassified;

3) Ensure that government information be readily and equally available to the public;

4) Protect the privacy rights of individuals and groups from unwarranted government intrusion;

5) Curtail the inappropriate classification of government information; and

6) Limit the role of the Office of Management and Budget in controlling information collected, created and disseminated by the federal government; and, be it further

RESOLVED, That the American Library Association send this resolution and a copy of the ALA chronology, "Less Access to Less Information by and about the U.S. Government" to political party nominees qualifying for inclusion on the ballot in the states and territories for the Office of President of the United States.

Adopted by the Council of the
American Library Association
New Orleans, Louisiana
July 13, 1988
(Council Document #75)

Mr. Wise. Thank you very much.

Next, we'll hear from D. Kaye Gapen, dean of libraries, University of Wisconsin, and representing the Association of Research Libraries.

STATEMENT OF D. KAYE GAPEN, DEAN OF LIBRARIES, UNIVERSITY OF WISCONSIN, ON BEHALF OF THE ASSOCIATION OF RESEARCH LIBRARIES

Ms. Gapen. Thank you very much, Mr. Chairman and members.

I come to you today from the University of Wisconsin, on behalf of the Association of Research Libraries, and with various other sets of responsibilities that expose me to libraries in many different parts of Wisconsin. This year, I am the chair of the Council of Wisconsin Libraries and also the chair of the Council of the University of Wisconsin Libraries, and I serve on the board of Madison Public Library in Madison, WI

With your permission, I want to elaborate on my prepared remarks rather than to go over them, except to summarize the four conclusions of the ARL statement.

First, we view OMB's information policies as a major negative force on the availability of Government information to the public. Information technologies have not been fully exploited, and in fact, in many instances, legislative intent has been subverted as a result of these policies.

In addressing possible resolutions, the need for collaboration among committees of Congress and among Government agencies is high. There is no single national information policy, and we benefit by having many applicable laws which sustain adequate checks and balances. In the same vein, there is no single agency dealing with these many issues. In fact, NTIS, GPO, and the Consumer Information Center all have charges to disseminate across all agencies. Then, we also have individual agency programs.

As we sat this morning talking about an analogy for this situation and encouraging cooperative action, I was struck by the undergraduate culture at the University Wisconsin-Madison. I will share their dimensional view of this situation in which in a waterbed you can make great sex, but you have to stay in sync. To make group sex in a waterbed, you have to really be in sync. We encourage that sort of cooperation.

I want to talk to you just a little bit about the University of Wisconsin-Madison.

Mr. Wise. I just have to interrupt—and people said that this was going to be a dull hearing.

Ms. Gapen. Well, we hope that the public news records of this will show that librarians encourage group sex in waterbeds.

Mr. Schiff. I have to admit my view of librarians has changed dramatically.

Ms. Gapen. We could talk in the hall.

The University of Wisconsin does have a more serious side. We're part of a higher education system in Wisconsin—the Madison campus is. We are the land grant university in Wisconsin, and we have responsibilities to serve the State. We participate with libraries of all kinds in the State and in the region. We lend over

100,000 items a year to people outside the university, answer hundreds of reference questions, and give lending cards to thousands of citizens who come to campus. We're a member of the Depository Library Program in conjunction with the State Historical Society, which is the regional depository, and we are a university marked by deep commitment to teaching, research, and outreach. Last year, the Madison campus brought in over $225 million in unclassified research grants. There are 43,000 students. The State extension program is part of the university, and there are hundreds of outreach programs.

Within that context and in the testimony that we submitted, we talked about the impact of technology on libraries and on universities and on the general use of information, and I want to share with you a little bit about some of the strategic decisions we're trying to make today in order to provide access to electronic as well as paper collections on the campus and in the State.

We have an online library system that acts as a public catalog and maintains the regular working files of the library. In that online system, not only do we have the holdings of the campus, but we can also mount the monthly catalog data base, and the ERIC data base, and we are in the process of bringing both of those to that online system. That system is available not only on the campus but through dial access from any part of the State and through computer-to-computer linkages from other universities in the UW system.

We're beginning to add—and we'll be sending out an RFP in the next month—a software package that will handle text management—full text data bases—journal articles, newspapers, and data bases which we might construct on campus—policy manuals, for example. That will enable us to mount such data bases as the Federal Register and the Congressional Record, available through the same online system as our other catalog information.

The benefit of a system like this can be exemplified by looking at the example of a small businessman who comes to Madison to take advantage of the university faculty and their work in biotechnology. The small business person wants to do some work on the bovine growth hormone. It takes 8 weeks to complete the search. The person will have gone to six libraries, many of them four or five times. They will have searched 14 data bases in 7 data base vendors, using different search protocols for each of those information resources, and they'll come out with a basic list of 256 hits. That search will cost at least $8,000. On the Madison campus, $45 of that is for parking tickets, because we have a serious parking problem.

If we are able to bring to the campus a text management system and one that handles data bases of the sort as MEDLINE and chemical abstracts and business news, we will have in one software package the ability to handle numerous data bases of all sorts, including the Federal Register and the Congressional Record.

We're working with IBM in the next year to move to imaging, so that we can also maintain photographs with high resolution capabilities, images of manuscripts, photographic images, and so forth.

The capabilities that we're building to support teaching and research can also support public access, and indeed, the university has an outreach mission. Let me give you some examples of how that's working.

The Census Bureau has designated one unit in each State to serve as a business information center. That, in Wisconsin, is located on the Madison campus. That business information center provides analysis of census information for business people at a cost-recovery basis. In order to bring those same capabilities onto the campus and to the school of business program, the dean of the school of business and I are supporting part of the operating costs of that center, trying to provide on the campus, no-fee access to what is available off the campus at cost recovery. I think, by the way, that the Census Bureau has had to require the cost recovery basis in order to make access to this information possible. We bring a rich resource to campus that we haven't had before.

We have, in the Madison library system, a minority high school outreach librarian, who is going to high schools where there are high densities of minority populations and teaching the lifelong learning skills of how to access electronic information and how to respond to social and economic issues that they are talking about in high school. We then follow up and establish interlibrary loan procedures between the campus and those high schools.

We have a small business outreach program, where we bring representatives of small business, including the economic development officers of the reservations in northern Wisconsin, to the campus and train them in the use of census and marketing information as well as general information access, and much of this relates to Government information.

We serve extension agents. We serve doctors, lawyers, the medical profession in general, and now we're beginning to talk about the judiciary.

In Wisconsin, in the last 4 weeks, you would have heard a great deal about the reservations and the Indians who are taking advantage of their treaty rights and doing spear fishing before the sport fishing season starts for walleye. There has been a mountain of legal opinion and precedent that has been created during the course of many judicial hearings of this matter. The information doesn't exist anywhere except in boxes of paper. That sort of information we can put on the information system and make it broadly available across the State to help people make better public policy.

These are the sorts of things we have been doing. We're finding that user patterns are changing as we implement these new technologies.

We now can deliver access to the home. We have libraries without walls and in our Depository Library Program we have Government document depository collections "without walls." We can provide bibliographic citations and then by telefacsimile the actual documents themselves. The Department of Education in its HEA title II-D program funded a $230,000 grant for Wisconsin to establish a high speed telefacsimile program during this year.

We bring together with Government information the rest of the collections that exist on the campus, expert library staff and the excellence of faculty members who are available for analysis with people who come to use the information.

We also bring the scholarship that is developed on the campus. For example, we have a data library which is made up of the tapes from social scientists who have done research using the census tapes.

This kind of capability, distribution, and access are in the end only effective if the information is used and so I want to talk very briefly about the second very important component that we haven't really addressed before. How can we enhance information literacy through our library programs?

I have here a copy of an American Library Association, presidential committee report on the development of information literacy and I want to just read from the introduction:

> How our country deals with the realities of the information age will have enormous impact on our democratic life and on the Nation's ability to compete economically. Within America's information society there also exists the potential for addressing many long-standing social and economic inequities. To reap such benefits people as individuals and as a nation must be information literate. To be information literate a person must be able to recognize when information is needed and have the ability to locate, evaluate and use effectively the needed information. Producing such a citizenry will require that schools, colleges and governments integrate the concept of information literacy into educational and information dissemination programs. They must play a leadership role in equipping individuals and institutions to take advantage of the opportunities inherent with the information society. Information is the grist of knowledge. Knowledge is the grist of wisdom.

In order to best benefit from the investment we have all made in the production of Government information using your three words from your earlier presentation, efficiently and effectively and equitably, we need the following things.

We need OMB policies that are supportive of the Depository Library Program.

We need OMB policies that are supportive of the use of electronic formats and the power that they bring.

We need flexibility. We should not harden our options too soon and I would be glad to speak to that in terms of standardization during the question and answer period.

We need new collaborative coalitions for the design of these systems and for the evaluation of their use because use patterns are changing.

We need pilot projects and other GPO funding to support GPO in this period of enormous transition.

And finally, we need electronic information to the people, where the heightened power of its use will be at their disposal, for information literacy is a personal empowerment. As we together make it available, together we can limit or enhance its capability.

Teilhard de Chardin has said that the future is in the hands of those who give generations reason to hope and live. As I spent the last 3 years working on issues related to Government information in electronic format, I often work at home. I sit and look at my 8 year old goddaughter and do some reality checking.

Will what I am doing, what I am thinking, and what I am hoping to accomplish give her hope as she grows up?

I think that we have to thank you, Mr. Chairman, for taking the leadership in introducing the legislation that provides a platform for bringing these many complex discussions into focus. The last 3 years have been challenging and frustrating to all of us.

As you provide leadership, I would suggest that at this point we are not really addressing national information policy. We are really beginning to try to build a national information strategy. That requires of us different approaches than the development of policy.

If I could leave you with one thought, it is that it is too early for any single agency to be given authority, sole authority, for forming complex and interlocking strategies.

Particularly in the development of policy on the public dissemination of Government information Congress must direct agencies to collaborate and universities and libraries must help.

Thank you.

[The prepared statement of Ms. Gapen follows:]

ASSOCIATION OF RESEARCH LIBRARIES

STATEMENT ON BEHALF OF THE ASSOCIATION OF RESEARCH LIBRARIES

by

D. KAYE GAPEN

DEAN OF LIBRARIES
UNIVERSITY OF WISCONSIN - MADISON

before the

SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE, AND AGRICULTURE

U.S. HOUSE OF REPRESENTATIVES

on

FEDERAL INFORMATION POLICIES & PRACTICES

May 23, 1989

1527 New Hampshire Avenue, N.W., Washington, D.C. 20036
202-232-2466 FAX 202-462-7849

Mr. Chairman. My name is D. Kaye Gapen. I am Dean of Libraries at the University of Wisconsin - Madison and I am pleased to testify today on behalf of the 119 research libraries that are members of the Association of Research Libraries (ARL).

ARL is an organization of research institutions, mostly universities. Each institution is represented in our deliberations by the chief library officer - the dean, university vice-president, or director of the main library on each campus or within each institution. I note this because it is important for Congress to recognize that the positions reached by ARL represent the conclusions of many individuals who are responsible for planning and managing information services that support the major research institutions of the U.S. and Canada.

To meet the information needs of the communities we serve, research libraries acquire information from a wide variety of sources including commercial publishers and government agencies. Government information is a resource in demand by our collective faculties, students, and the business and general public who use research library services. The terms and conditions that the U.S. Government sets for access to government information make a tremendous difference in a library's ability to meet these diverse demands.

Government information provided by libraries furthers research in a broad range of disciplines and arenas and contribute to new scientific and technical breakthroughs. Research libraries are a significant source of information and services for individuals seeking to create new knowledge, conduct R&D, and move the research results into the marketplace. Research libraries are of course not the only source of information for the communities they serve, but they do play a pivotal role in support of national goals. Therefore research libraries represent a key component of the national infrastructure that supports and fulfills federal information policy.

ARL appreciates the attention that the Members of the Subcommittee are giving to the issue of federal information policies and practices. In view of the number of library representatives invited to testify today, we assume the Subcommittee is already aware of the wide range of concerns our community has about federal information policies and practices. My statement highlights what we believe to be major points. Additional information will be found in attachments to my statement and, I am confident, will be provided by my colleagues.

It is ARL's position that

- OMB policies have had a major negative impact on federal information policies.

- Information technologies have not been fully exploited by the government and have in fact subverted legislative intent.

- In addressing possible solutions, there is a need for collaboration among Committees of Congress and among government agencies.

- Research libraries are positioned to play a pivotal role in support of federal information policies.

OMB Dimunition of Government Role in Preference to Privatization:

ARL views the Office of Management and Budget's information policies as a major negative force on the availability of government information to the public. The policies have contributed to a government-wide crisis generated by pressure from OMB and exacerbated by a relatively small but vocal segment of the information industry. The library community is all too familiar with the consequences of these pressures on the information policies and practices of federal agencies. The result has been a chilling effect on efforts to improve information management practices throughout government to the detriment of public availability of government information.

The results of these misguided OMB information policies are confusion — in some cases gridlock — that delays agencies' pursuit of the opportunities afforded by using information technologies. Opportunities such as: improved productivity, potential for significant cost savings (estimated conservatively at hundreds of millions of dollars a year), and enhanced public availability to government information.

We understand that OMB has undertaken a review of Circular A-130 and the proposed supplement to the circular. We urge the Subcommittee to encourage OMB to bring these policies in line with Congressional policy to support wide availability of government information. In particular, we seek reaffirmation by the Subcommittee of the responsibility of the government to disseminate its information.

Government has a responsibility to disseminate its information and while ARL is supportive of private sector partnership with the Federal Government to carry out this responsibility, we have concerns about the terms of such partnerships. We begin by defining the private sector as non-governmental, including libraries (public and private), not-for-profit organizations, as well as commercial information industry companies. And we insist that any partnership adopted by a federal agency be accompanied by a public statement explicitly detailing how Congressional mandates in support of public availability of information will be fulfilled.

The Paperwork Reduction Act is cited as authorizing legislation for OMB Circular A-130 and a proposed supplement. The law states that one of its purposes is to increase the availability and accuracy of agency information. The legislative history explicitedly states that the law is not intended to limit dissemination of information, but to limit the collection of information judged to be an unnecessary burden on the Nation. There are references to avoiding duplication of information collection - but no reference to avoiding duplication of dissemination.

OMB's privatization agenda skewed the development of information policies as has technology. In electronic files, the line between information collection and dissemination is blurred when technology provides a continuous flow.

A more detailed account of our objections to OMB's information policies is attached to this testimony.

Technology Subverting Legislative Intent

We all know that technology offers opportunities to manage and use information more effectively, and potentially at less cost. We also know some technological applications can inhibit access if user needs are not considered in the design of the system.

Many new technologies have been introduced since key pieces of national information policy legislation were passed. The development of new technologies does not change legislative intent. But, in fact, the use of new information technologies by agencies of Government has subverted legislative intent and increased the tension between achieving the goal of public access and containing the costs of dissemination of government information. As always with the formation of sound public policy, policy decisions should be made first, followed by cost considerations and choices available to policy makers.

Specific technologies or formats need not and should not be included in any new legislative language due to the fast-paced nature of technological change. Instead, it is important to maintain the policies of public access and cost-effectiveness and include flexibility to anticipate the development of yet unknown technologies and formats.

Need for Colaboration Among Congressional Committees and Government Agencies

We appreciate that the issues the committee is addressing are complex and that the jurisdictions of the Committees of Congress and agencies are intertwined however, from a users' perspective, and as taxpayers, our concerns are access to government information, and access in a timely and cost-effective manner. It is important therefore to keep the policy objectives of public access and cost-effectiveness in mind and sort out competing jurisdictions and agency roles.

As this Subcommittee looks to changes in the Paperwork Reduction Act, we believe it is important to recognize other efforts underway and work with other Committees of Congress to better define agency roles and authorities. This will be particularly important as both the Government Printing Office and Commerce's National Technical Information Service (NTIS) develop and implement electronic services. Increased cooperation among government agencies, and in some cases coordination of programs, is necessary.

Recommendations for Policy Analysis and Agency Decision-Making

Highlighting ARL's strong commitment to equitable public access to government information, the chief executive officers of the major research libraries of the Nation, adopted six principles concerning government information in electronic format. We concluded that each principle is of paramount importance in the shaping of federal information policy and ask that the Subcommittee consider them in your analysis of federal information policies and practices.

The six principles are:

1. The open exchange of public information should be protected.
2. Federal policy should support the integrity and preservation of government electronic databases.
3. Copyright should not be applied to U.S. Government information.
4. Diversity of sources of access to U.S. Government information is in the public interest and entrepreneurship should be encouraged.
5. Government information should be available at low cost.
6. A system to provide equitable, no-fee access to basic public information is a requirement of a democratic society.

ARL also identified a need for Congressional understanding of information flow patterns not just within the government, but also through institutions that are in partnership with the government to provide information to the public on its behalf. Libraries leverage the information programs of the government, expanding the number of points of possible contacts for users and maximizing the uses made of the information. The financial investment now made by libraries in support of equitable public access to U.S. Government information is considerable. An estimate is that libraries spend $10 for every $1 spent by the federal government in support of access to government information.

As you weigh policy choices, the effect on libraries, or more pointedly, the effect on the users who turn to libraries for government information, must also be considered. ARL's findings represent our best effort to understand the effect of these changes for ourselves. Attached is a summary of our report on the issue: Technology and U.S. Government Information Policies: Catalysts for New Partnerships. We will of course make the full report available at the request of the Subcommittee.

NEW FRAMEWORK FOR LIBRARY SERVICES

Libraries play a pivotal role in providing information services to a wide variety of communities including those that seek to create new ideas, to undertake research and development, and to move the results into the marketplace. Research library services are used by people who the Nation depend upon to fuel local and national economies and to support efforts for the U.S. to hold a competitive edge internationally. How we serve these communities is affected by federal information policy. Therefore I would like to spend a few mintues highlighting the changes taking place in libraries.

Libraries are in the midst of a transition in response to the new information reality. "Electronic information" and "electronic communication channels" allow creative shaping and expermentation toward an entirely new context or framework for library services. A new paradigm for library services is developing because these technologies have characteristics which are different from anything libraries have dealt with in the past.

Most library collection resources (paper, microformat, tapes, sound recordings, maps, AV materials, etc.) exist in "handleable" form and are delivered physically. Electronic information, however, is created in digital form, is stored digitally on a variety of computer disc devices, and is delivered digitally over a variety of telecommunications/telephonic networks.

Providing users with access to electronic information is significantly different from providing access to a traditional, print-based library. Diversity, rather than uniformity, and varying information access skills, characterize gateways to electronic information. A computer tape or CD-ROM containing data is useless technology without the software that enable the information to be retrieved. The degree of assistance from a librarian is substantial when the originator of electronic information, eg, a government agency such as the U.S. Geological Survey, does not provide the retrieval software.

Even with the provision of user firendly software in any electronic product, the library provides assistance to users who need to access data from a wide variety of sources available in different formats and with different retrieval protocols.

A distinctive characteristic of the research libraries that are members of ARL is the provision of collections, and accompanying services, that are broadly based and comprehensive in discipline or topic. In this setting, the library role of assisting a user to understand the scope and limitations of any single source and to identify others, takes on extraordinary dimensions. The broadly based collections, and services, of research libraries advance the research process not just by providing narrow, well-defined search services, but also by enhancing discovery through serendipitous exploration of concepts and data.

Most users lack many of the necessary computer skills to use the wide variety of electronic resources available to them. They therefore require an intermediary — a librarian. Librarians find it necessary to add information and therefore value to electronic databases in order to make them more readily usable by a wider audience. This is the application of library skills and information technology to retrieve, reformat, interpret, and summarize data.

Libraries are well into this evolutionary transition that encompasses both print and electronic formats. Critical to the success of this transition is that actual possession of information resources, be it a book, film, or magnatic tape, becomes less significant than access to information. This has lead to a reexamination of resource sharing among libraries and in turn has fueled the development of new access and delivery systems.

Because of the breadth and depth of their collections, research libraries tend to serve as resource collections for other libraries. Evolving patterns associated with electronic information will have a significant impact on the role of research libraries in the provision of national information services. Catalogs of research libraries serve as regional or national gateways that contain references to information in electronic as well as printed formats whether held locally or elsewhere. And this has lead in turn to an increased emphasis on linkages with state-wide and regional systems through advanced telecommunications networks.

All libraries are changing as a result of the new information environment within which we provide services. However, depending on the characteristics of the library, and the institution it most immediately serves, the pace and dimension of change varies. Therefore federal information policy must recognize, at least in the short term, some disparity among libraries. This disparity should not suggest a renunciation of the role the library community has alway assumed for this nation: that is, as active partners with the U.S. Government in making government information widely and equitably available for the people of the nation.

Thank you. I will be pleased to answer your questions.

Attachments:

1. ARL Comments on OMB Information Policies
2. Technology & U.S. Government Information Policies — abridged
3. ARL Fact Sheet

14931

D. Kaye Gapen

Witness appearing before the House Subcommittee on

Government Information, Justice, and Agriculture

May 23, 1989

on behalf of the

Association of Research Libraries

D. Kaye Gapen is Dean of Libraries for the University of Wisconsin- Madison. She is a member of the American Library Association, and serves on the Association of Research Libraries Board of Directors. She recently chaired an ARL Task Force on Government Information in Electronic Format.

13301

ASSOCIATION OF RESEARCH LIBRARIES

ARL COMMENTS ON OMB INFORMATION POLICIES

ARL views the Office of Management and Budget's information policies as the major negative force on the availability of government information. The policies have contributed to a government-wide crisis generated by pressure from OMB and exacerbated by a relatively small but vocal segment of the information industry. The library community is all too familiar with the consequences of these pressures on the information policies and practices of federal agencies. The result has been a chilling effect on efforts to improve information management practices throughout government to the detriment of public availability of government information.

The result is confusion, in some cases gridlock, that translates into lost opportunities afforded by using information technologies. Opportunities such as: improved productivity, potential for significant cost savings (estimated conservatively at hundreds of millions a dollars a year), and enhanced public availability to government information.

Main Objections

ROLE OF GOVERNMENT IN THE DELIVERY OF INFORMATION TO THE PUBLIC: Circular A-130 supports a role for the private sector in lieu of a government role. ARL supports a role for the private sector in addition to a government role.

Private sector entrepreneurship that facilitates the dissemination of government information should be supported. Extraordinary products and services exist and fill a need in the marketplace for some parts of our society. Unfortunately, the expense of these fine services is beyond the reach of other parts of our society. Not every citizen wants, or can afford, to pay the fees charged by commercial database suppliers — fees that range between $65-$175 per hour of use. The result is access for those who can afford to pay for it, and a barrier for those who cannot. Information haves and have-nots are the result — an affront in a nation founded on democratic principles of an equitable, educated, and informed citizenry.

We reject a policy that makes public access to government information created or collected at public expense dependent on the private sector because the government is precluded from providing the information. This extends support for private sector entrepreneurship too far.

There are other serious problems that arise from reliance on commercial sector sources for delivery of public information. These include: the potential for imposition of proprietary control over public domain information; the uncertainty of corporate stability or continuity of service; and the inappropriateness of what amounts to a public subsidy to commercial interests.

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202-232-2466 FAX 202-462-7849

OMB POLICY VS AGENCY MISSION: There is significant confusion concerning the actual intent of A-130 vis-a-vis the legislated responsibilities of agencies to disseminate their own products.

Agencies have difficulties complying with both the regulatory requirements of A-130 and applicable statutory mandates. An example is the debate over provision of remote public access to a Federal Maritime Commission database. The database contains shipping tariff information that the FMC is required by law to make available to the public. OMB cites A-130 as policy prohibiting remote public access to the database. The library community, and major segments of the shipping industry, support this capability. Private sector information industry firms are divided on this issue.

BASIC VS VALUE-ADDED: The A-130 supplement instructs agencies to "prefer to wholsesale" government information and leave "retail" value-added functions to the private sector.

ARL objects to limiting the role of government to the dissemination of raw data and the mandatory reliance upon private sector services for access to this same data. This OMB policy would result in significant additional costs to users, including the government itself, and libraries. Users will pay the government for raw data, and then pay a private sector enterprise for software that enables access.

The public should not be obliged to buy an expensive and complex software package to access a government electronic product.

AVAILABILITY AND FORMAT OF INFORMATION: A-130 makes a policy distinction about how information is to be made available based on the format of the information (paper or electronic). ARL contends that the format should not dictate policy.

We insist that fundamental principles inherent in a democracy be reflected in government information policies and that they should not be dismissed because the format of the information changes. Prominent among those principles is equal and ready access to government information for all Americans.

THE DEPOSITORY LIBRARY PROGRAM AND A-130: The Depository Library Program (DLP) is significantly affected by OMB information policies.

To help fulfill its responsibility to inform the public on the policies and programs of the Federal Government, Congress established the Depository Library Program. The Nation's almost 1,400 depositories participate in a joint venture with the federal government to provide no-fee public access to federal information. With certain specified exceptions, all government publications are required to be made available to depository libraries (44 United States Code 1902).

OMB has actively discouraged incorporation of electronic formats in the DLP. In a September 29, 1988 letter from OMB Director James Miller to Joint Committee on Printing Chairman Rep. Frank Annunzio, OMB declared the DLP law not applicable to government information in electronic formats and placed the burden on agencies to make a case for including such products in the program.

As more information is maintained electronically in computerized databases or magnetic tape, the legislative intent of the DLP will be eroded if depositories are limited to paper and microfiche products, and a limited range of electronic products. The General Accounting Office estimated that in 1987, there were 7500 existing electronic information products created by government agencies. None of these were distributed to depository libraries. In addition, most of these products were not available from other government-wide public information programs such as the GPO Superintendent of Documents Sales Program, the National Technical Information Service, or the Consumer Information Center. As a result, the general public whose tax dollars supported their creation, has limited awareness and access to these electronic information products.

COST RECOVERY: A-130 has been interpreted as requiring agencies to recover costs from information users. ARL argues that it is the nature of the information itself, and circumstances specific to the agency and the information product, that should dictate if, and the extent to which user fees should be assessed.

Conclusion

Opposition to OMB information policies is not new. In 1985, over 300 letters, including letters from Members of Congress, were filed with OMB commenting on the then draft Circular A-130. The majority of the letters were strongly critical of the Circular's provisions regarding access and dissemination of government information and of the privatization policy embedded in the policy. Critics argued that OMB's approach would allow — and in fact encourage — practices detrimental to the public availability of government information.

There is no statutory authority for OMB's A-130 privatization policy. A review of the Paperwork Reduction Act, cited as the authority for OMB's activity in this area, does not reveal Congressional support for privatization of government information. Nevertheless, OMB was successful in extending an overarching privatization initiative into federal information management policies.

Instead of providing federal agencies with useful guidance, OMB information policies are a major obstacle for agencies that seek to use technology for effective information management. In addition, it is well documented that these policies have had an adverse impact on the availability of government information to citizens. The proposed supplement places additional constraints on government agencies in their efforts to fulfill their statutory obligations. Public availability of government information is further eroded and additional financial burdens are imposed on those seeking to gain access to this information.

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Technology & U.S. Government Information Policies: Catalysts for New Partnerships

Association of Research Libraries*

Technology, moving faster than policy development, has left U.S. government information programs resting on uncertain foundations. This article, an abridgement of a report by the ARL Task Force on Government Information in Electronic Format, is the result of an effort to develop a framework for understanding—philosophically, functionally, and fiscally— the patterns that exist for government information today, and the shifts in those patterns resulting from the introduction of government information in electronic formats. Four questions are identified that should be considered by government agencies and libraries as decisions are made about how to provide the public with government informtion in electronic format. The report points to be need for a clearer picture of how government responsiblities for public availability of government information in elctronic formats might be fulfilled in partnership with the private sector without the loss of the characteristics that make this information distinctive: the absence of restrictions on use, including for basic government information, absence of a fee.

Federal policies affecting public availability of government information arise from a wide variety of laws and regulations, some of which do not offer clear guidance when addressing issues associated with electronic information. Pervasive and profound economic, political, and technological trends have exacerbated longstanding tensions inherent in these policies.

Historically, there has been Federal support for education and libraries in general. The government of the United States is founded on the premise that there will be an informed

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**The Association of Research Libraries Task Force on Government Information in Electronic Format was chaired by D. Kaye Gapen, University of Wisconsin. Other Task Force members were: Nancy Cline, Pennsylvania State University, Malcolm Getz, Vanderbilt University, Jean Loup, University of Michigan, and Barbara von Wahlde, State University of New York at Buffalo. Direct all correspondence to: Jaia Barrett, Association of Research Libraries, 1527 New Hampshire Avenue, N.W. Washington, D.C. 20036*

Government Information Quarterly, Volume 5, Number 3, pages 267–278. ISSN: 0740–624X.

electorate, with educated, responsible citizens participating in their governance. This obligation to provide the public with information that ensures government accountability and contributes to an informed citizenry is the foundation of laws within the chapters of Title 44 of the *United States Code* that provides for the Government Printing Office (GPO) sales program and the depository library program.

On a number of fronts, in a seemingly endless variety of ways, these basic premises and partnerships are now challenged. Three major trends are:

- *Privatization of government functions* The move towards privatization of public functions, an international trend, is part of an effort to shrink the size of government by assigning government function to the private sector. Privatization of information programs that had previously been an integral part of government agency programs can have undesirable consequences such as: increased prices for services that lead to classes of information-rich and information-poor; elimination of limited-use reports or service aspects of a program not supportable when subjected to commercial, market-driven product design; the possibility of private, self-interested influence over the delivery of public information; and exertion of copyright or copyright-like control over public information.
- *Reduction of government agency budgets.* Another strategy for shrinking government has been to reduce agency budgets. This has had a profound impact on information programs and services of agencies as well as on the availability of government information in libraries. It has also led to unusual arrangements between Federal agencies and commercial information companies to develop jointly agency electronic information systems—arrangements that sometimes lead to undesirable agreements that give exclusive control of public information to private organizations.
- *Over-zealous protection of government information.* A penchant for secrecy has led to overclassification of government information, efforts by the defense and intelligence community to impose controls on unclassified information, and pollution of information sources with an active disinformation campaign intended to mislead all except those with a "need to know."

In 1985, ARL adopted a "Statement on Access to Information" affirming the Association's commitment to the principle that unrestricted access to and dissemination of ideas are fundamental to a democratic society. Recognizing that legitimate goals of national security and economic competition exist side-by-side with the principle of unrestricted access, ARL concluded that the latter must take precedence unless a clear and public case can be made for restricting access in a specific instance or to a clearly defined body of information.

Increased application of new technological developments (large computer databases with interactive online capabilities, diskettes of data for use in personal computers, laser optical disks, and so forth) for the storage and retrieval of U.S. government information has challenged traditional practices of providing the public with access to this information. To address these challenges, ARL is developing a statement of principles that specifically address the public availability of U.S government information in electronic format (see Table 1). Identification of essential elements or measures against which government information programs might be evaluated in terms of equitable citizen access to U.S. government information would contribute to efforts at striking the proper balance between competing principles in an environment of fiscal constraint.

Table 1. Government Information in Electronic Format: A Statement of Principles

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Note: The following principles, with accompaning rationale statements, were submitted to the membership of ARL in October 1987 for review and were adopted in May 1988. Readers are encouraged to contact the ARL Office for the full statement as adopted by ARL members.

The ARL Task Force on Government Information in Electronic Format developed the following six principles and encourages full discussion of them in terms of the opportunities, challenges, and financing questions posed by electronic information products.

1. The open exchange of public information should be protected.
2. Federal policy should support the integrity and preservation of government electronic databases.
3. Copyright should not be applied to U.S. government information.
4. Diversity of sources of access to U.S. government information is in the public interest and entrepreneurship should be encouraged.
5. Government information should be available at low cost.
6. A system to provide equitable, no-fee access to basic public information is a requirement of a democratic society.

Fundamental principles inherent in a democracy must be reflected in government information policies and should not be dismissed because the format of the information changes. Inattention to fundamental principles in support of public availability of government information allows a vacuum to form wherein decisions are based largely on environmental pressures such as political polemics, budgetary constraints, marketplace economics, and/or administrative convenience. Decisions so made can result in practices of benefit to one segment of our society but to the disadvantage of others.

Some basic areas of contention, where policy is unclear or challenged, include the extent to which tax dollars should fully support the collection and active dissemination of government information and when user fees are acceptable to recover some of the costs of these activities, and how to determine the proper balance between encouraging commercial entrepreneurs to enter the market with government information products while maintaining government responsibilities to provide information services.

PRIVATE SECTOR ROLES AND GOVERNMENT RESPONSIBILITIES FOR DISTRIBUTING INFORMATION

Government information, in a variety of formats, is made available to the public by a diverse assortment of providers including the government itself (e.g., GPO, NTIS, and/or direct from source agencies including Congress), commercial and non-profit information companies, and libraries. This variety of sources of access to the same information is in the public interest because it ensures that users, both within and outside of government, have available a sufficiently varied array of sources to support judgments on data credibility and assessment of government accountability. However, questions have been raised about government duplication of commercially available information products.

The private sector, both for-profit and non-profit, plays an active and important role in distributing government information in print as well as in electronic form. Entrepreneurs can invent new information products that meet particular market demands. New products can improve the well-being of consumers by identifying and filling consumer demands more effectively or by offering lower costs. As electronic systems grow in importance, private entrepreneurs may be expected to develop new products that take advantage of the new opportunities.

Concerns about private sector development or operation of government information systems include the uncertainty of corporate stability or continuity of service, the imposition of proprietary control over the content or use of public domain information, and the imposition of high, profit-motivated fees for access to information created or collected with public funds.

Government Responsibilities

What is the appropriate scope for government action in providing information and where should we look for effective private action? For certain classes of information, full and effective government participation in the provision of information products is essential. For other classes, government participation should be limited or the information collection activity eliminated. In particular, where broad citizen access to information is essential to the operation of our democratic institutions, effective government involvement in the production and distribution of information products is important.

Indeed, the level of information to which legislators themselves have ready access depends on an active and subsidized program of government publication. The effectiveness of electoral institutions in managing a complex governmental enterprise, then, depends critically on ready and general availability of documents that describe governmental actions, programs, and policies.

For this class of information, government tax-financed creation and distribution of products are essential. Our democratic institutions will not engender trust if information about their activities is not broadly distributed and routinely and conveniently available. As electronic formats become desirable means for citizen access, then, the government, and in particular, the Congress, should play an active role in supporting appropriate, new electronic information products and delivery systems.

In these cases, government publication and distribution of information products are valuable and appropriate. Of course, if the government failed to publish such products, private firms would find more opportunities to create products. However, our society will be the poorer if it does not have tax subsidies for certain kinds of information products. The test, then, is not whether a for-profit firm could sustain an information product if the government did not have a similar product, but rather whether there is a legitimate governmental role and public need in creating and distributing particular information products. The value of tax supported publication has long been recognized for print products. The same logic militates the tax support of particular electronic publications.

The Federal deficit rightfully highlights the need for reassessment of Federal spending patterns. Government activities associated with the public availability of government information have costs associated with them and should be subject to the same scrutiny applied to other parts of agency budgets. Essential to undertaking an effective, long-term view of agency information programs is identification of the purposes that the information content serves, within and outside government, and a judgment of its relevance to fulfilling government responsibility for making information available.

The government may find its purposes well met for certain information sets that support a particular market, e.g., crop reports, by gathering the information with tax support but allowing consumers to support distribution through fees. How the depository library program might be affected by such distribution is a question that should be addressed in a review of the program.

In some instances, there is no compelling reason for government involvement. When the government has no particular advantage, or need, to gather a given set of information, market forces should lead to an appropriate array of private information products.

Defining Complementary Partnerships

There are compelling reasons to delineate complementary roles for the government, libraries, commercial and non-profit information organizations in making government information available to the public.

All libraries designated as part of the depository library program (a mix of publicly and privately supported organizations), and many other libraries as well, have and will continue to play key roles in fulfilling government information responsibilities by providing no-fee access for the general public to government documents. New electronic formats for the information do not change library commitment to that role. What is key is that government and libraries collaborate on developing a common understanding of respective responsibilities to the public.

What is needed is a clearer picture of how government responsibilities for public availability of government information in electronic formats might be fulfilled in partnership with the private sector without loss of the characteristics that make this information distinctive: the absence of restrictions on use including, for basic government information, absence of a fee.

The private sector has already contributed to the development of a diverse array of information systems that form critical supports for all aspects of our democratic society. If common goals can be established the private sector with its acknowledged strengths could also contribute in a significant way to fulfilling government responsibilities to make information available to the public. What is key is identification of mutual private sector-government goals that support partnerships for the delivery of public information unencumbered by copyright or other use restrictions. For that information where broad citizen access is essential to the operation of our democratic institutions, such partnerships must function so that the costs do not force the imposition of user fees by the government or libraries.

FRAMEWORK FOR POLICY ANALYSIS

The characteristics of government information in electronic formats demand a new framework for analyzing and defining how this information should be made available to the public. Two elements of such a framework are presented: a taxonomy to categorize the characteristics of government information in electronic format, and a model that identifies potential value-added processes for an information system. In addition, hypothetical scenarios illustrate the need to consider four key questions as decisions are made about approaches to distributing electronic information.

Taxonomy of Government Information in Electronic Format

Identification of a taxonomy or classification of government electronic information systems or products would contribute to policy analysis. For example, electronic information products or systems might be categorized on the basis of the following four dimensions.

- *Volatility.* Some electronic systems are highly volatile—dynamic and highly time sensitive; others are static.
- *Public Policy Relevance.* Some systems convey information that is highly relevant to consideration of important public policies and thus are of broad public significance; others have information of little policy relevance and are of interest only to a specialized audience.
- *Value to Research.* Some systems convey information that is highly significant for research; others convey information of limited research value.
- *State of System Development.* Some systems could be compared to wholesale products, requiring significant hardware and value-added software support before end-users may make use of it; others are more like retail products, fully packaged and presented for end-users.

These four dimensions are described in terms of two extreme points on a spectrum. In reality, consideration of the characteristics of a specific system following such a classification will fall anywhere between the two extremes. A taxonomy reflecting these four dimensions is not intended as an absolute measure for policy making but rather is put forward to illustrate that not all government information in electronic format is the same and to identify some obvious categories of systems that will encourage policy discussions to move from generalities to specifics.

Each category of such a taxonomy may suggest different ways to address policy issues associated with dissemination of the information. The taxonomy could be subdivided further into files that are textual as opposed to other kinds of information as well as by the anticipated extent of public audience for the information, should these kinds of characteristics, or others, need to be considered in making policy decisions.

Scenarios for Dissemination

How government information in electronic format is disseminated will have an impact on existing partnerships between the government and for-profit and non-profit institutions. The partnerships may, in fact almost certainly will, continue in some capacity. However, the responsibilities, especially those concerning which partner incurs what costs, are very much in question.

Policy development for dissemination of government information in electronic format is in great flux. Even so, it is important to anticipate if not all of the possible options, at least some of the general approaches that may be taken. By comparing two very different dissemination scenarios to one another it becomes clear how government information could be provided with varying levels of user accessibility mechanisms. While an awkward phrase, the notion of user accessibility mechanisms is significant to any definition of the government's responsibilities for ensuring public availability of government information in electronic format.

For example, a government agency may produce electronic files with no user accessibility mechanisms, expecting that if those mechanisms are needed, they will be added and paid for by someone else. At the other extreme, a centralized government agency could provide full support for an array of electronic information products that an inexperienced end user can master quickly.

Key Considerations

Four questions should be considered by government agencies, or libraries acting as intermediaries, as decisions are made about how to provide the public with government information in electronic formats. Responses to these questions, when applied to a particular information system, may suggest how access to that system should be paid for—for example, fully tax supported or partially tax supported with intermediaries and/or users paying part of the costs.

- What is the significance of the information in the system for the development, pursuit, or assessment of public policy positions?
- What are the user accessibility mechanisms or value-added processes needed and/or added by the creator of the information, the mediator of the information, and the user of the information?
- What are the relative costs of adding specific value-added characteristics at any point in the information chain (creation, mediation, and use) in order to assure equitable public availability of government information? And how will the costs of providing these value-added processes be distributed among Federal and state agencies as well as private organizations?
- If a shift in costs (among government, libraries, and users) is anticipated when this government information is disseminated in an alternate format, how will this affect resource sharing among libraries and the ability of the depository library system to support no-fee public access?

A Value-Added Model

A search for a means to analyze such complex and shifting relationships and responsibilities identified a model in a book by Robert S. Taylor titled *Value-Added Processes in Information Systems*.[1] Taylor views an information system as a totality from originator to end-user. His definitions and conceptualizations, particularly the transformation of a "wholesale" information product through value-added processes into one that is "retail," are highly applicable.

Taylor defines value-added activities as those procedures that strengthen or render more accessible messages in an information system. His definition of an information system includes librarians in their function of mediating information to the public, as well as others such as analysts, evaluators, and synthesizers who perform similar functions. In viewing the transformation of the "wholesale" product, in this case raw government data that are unusable without mediation or intervention, into a "retail" information source, the model illustrates how responsibilities for adding value may shift among originators, mediators, and users. It also suggests the kinds of changes needed in total information systems as electronic information is substituted for print sources.

Taylor's model, based on 23 elements, allows an assessment of the presence and quality of values added at each stage of the information process, that is, by the originating source, the library or other mediating service, and the user. The model stresses end-user needs and the structure of the information environment as major elements in the evolution and evaluation of information systems. The fullest application of the model implies the creation of problem-clarifying systems, significantly different from question-answering systems.

NEW FRAMEWORK FOR LIBRARY SERVICES

Government information—its creation and dissemination—is a microcosm of the elements and layers of a new paradigm for libraries.[3] The prospect of GPO providing government information in electronic format to depository libraries accelerates the need for libraries to address the shifting paradigm and turn concepts into very real questions of library and public policy.

There is increasing need, because most users lack all the necessary computer skills and require an intermediary, for librarians in archives or libraries housing machine-readable data to add information and therefore value to these resources in order to make them more readily usable by a wider audience. In a sense such librarians are information technologists working with a variety of print and non-print formats, electronic databases, and other sources and adding their skills in retrieving, reformatting, interpreting, and summarizing data.

The evolution of a bimodal library environment that encompasses both print and electronic formats will also lead to a re-examination of resource sharing among libraries. Ownership of information resources becomes less significant than access to information and leads to the development of new access and delivery systems.

Because of the breadth and depth of their collections, research libraries tend to serve as resource collections for other libraries. As more multi-type libraries have used OCLC or RLIN for retrospective and current cataloging, the presence of their holdings in these networks has spread interlibrary loan requests among a larger number of libraries, although the general pattern of research libraries as net lenders seems to be continuing.

Evolving patterns associated with electronic information will have a significant impact on the role of research libraries in the provision of national information services. Catalogs of research libraries could serve as regional or national gateways that contain references to information in electronic as well as printed formats whether held locally or elsewhere. This could lead, in turn, to an increased emphasis on linkages with state-wide and regional systems through advanced telecommunications networks. It is unlikely, however, since the use of electronic sources requires larger capital and personnel investments, that sharing will necessarily lead to a reduction of current expenditures for any individual library.

THE DEPOSITORY LIBRARY PROGRAM

Strong depository collections, including regional depositories, reside in a wide variety of types of libraries with varying degrees of institutional resources and different institutional missions. As resource sharing becomes more expensive, the ability and willingness of some regionals to serve as resource centers are in question. As the pattern of resource sharing among different kinds of depository libraries changes with the introduction of electronic formats, it is possible that participating libraries will define new scopes for their depository collections and offer a more focused but well defined array of services for the collection.

The particular kind of electronic format chosen to make government information available to depositories will probably largely determine the willingness of depository libraries to add it to their collection.

Some formats would involve incurring large fixed costs at the library, with significant local computer systems and electronic storage devices. Such investments in local systems may allow users to find information at very small added cost per inquiry. For example, a library might acquire data on tape and mount the files on magnetic disk drives attached to mainframe computers with powerful search software available to users. Other electronic formats may involve little local investment but require significant incremental cost per inquiry. For example, a datafile may reside on a remote computer with access charges per unit of search levied to recover the cost of the computer time as well as the telecommunications charges.

Patterns of access to government information in electronic formats are likely to parallel patterns already emerging in regard to other electronic information. That is, depositories located in smaller libraries or institutions are more likely to choose the low fixed cost and high incremental cost per search strategy for most electronic information. Depositories located in larger libraries are more likely to choose the high fixed cost and low incremental cost strategy at least for very commonly used datafiles. These larger libraries may be in a position to serve other depository libraries with cost recovery from some source.

Examination of Budget Mechanisms

Access to government information through the depository program (and in addition to it) involves costs. The GOVERNMENT bears a significant part of the costs by publishing and distributing material to the depository libraries. The LIBRARY bears a significant part of the cost in the provision of space, professional and clerical staff assistance, the provision of bibliographic access, reference mediation, the continuing maintenance of the collection, and, in an increasing number of instances, the provision of the equipment necessary to read or use the documents. USERS bear a significant part of the cost as well, in particular, the time and travel associated with locating and using the materials (as well as through the tax dollar).

Over the history of the depository program, each component involved has responded to the costs involved by building the budgets required to maintain the chain of creation, distribution, integrated bibliographic access, physical accessibility, and use. However, even before the impact of technology began to be so strongly felt, the pressures of budget constraints had begun to affect the historical patterns. The impact of technology and the creation of a whole new paradigm of library services have accelerated the rate of changes, and significant adjustments are now being made within library budgets.

In regard to electronic government information, then, there are at least two tensions that must continue to be addressed for resolution: (1) the tension between the goal of increased efficiency (for the government agency, the library, and the user) and the maintenance of equitable access to public information; and (2) the tension involved in the cost shifts in the creation, distribution, and accessibility chain as technology has an impact on each component of the chain.

It is clearly important that all of the involved parties ask the correct array of cost questions in order to produce the accurate information on which will be based a host of future decisions about information products and services.

A college or university library must also take note of relationships its parent institution may be in the process of establishing with business, agribusiness, and other parts of the private sector including programs in support of technology transfer. The growth of university-related research parks is one of the best examples of the mutual benefit that can accrue to higher education and the private sector when cooperation occurs. Academic libraries, by institution mandate and within institution-wide policy controls, are more and more closely involved in the support of these mutual endeavors. The fact that the costs and benefits for the private sector and higher education are not mutually exclusive adds yet another layer of complexity to the policy and economic context within which academic libraries provide information and service. Certainly, that layer of complexity is present in the provision of government information in electronic form resulting in another important element to be considered.

The prospect of the delivery of government information in electronic form through the depository program raises important questions about whose budget will be affected as patterns change: the government agency's, the library's, or the user's? Will the costs of the depository program that includes electronic information closely parallel those experienced for print formats? Will the information have relatively the same value as the material in print to the government, to libraries, and to users so that the present array of support for the print program can be extended to support the electronic information?

The answers to such questions depend on the details of the design of a particular file of electronic information and on the policies adopted for implementation. The nature of costs to the government, the library, and the user will differ markedly for different electronic information products. What is needed is an examination of Federal agency and library budget mechanisms that have supported the statutory responsibilities of the source agency, the GPO, and depository libraries.

Possible Changes in the Depository Library Program

The findings of the ARL Task Force on Government Information in Electronic Format prompted speculation about how the depository library program might change as a result of these trends. The following description is not presented as a final conclusion, but as a suggestion that might stimulate discussion and further analysis within the depository library community and those communities they serve.

Roles for depository library participants may change in some or all of the following ways. First, since requirements for equipment and staff to support a full-service electronic depository collection are considerable, the program may be well served by having just a few libraries support multi-state or national public information needs as part of the program. From this there may develop varying levels of responsibility for providing services for electronic products. Some depository libraries may not be able to afford the equipment and/or staff support to provide services for certain kinds of government information in electronic form. Location, however, becomes less consequential as electronic information can be relayed from library to library electronically, recalling, however, that the economics of resource sharing may be different.

This may lead to a redefinition of depository library service responsibilities in which government documents and gateways to government information will be focused, along the following lines:

- *BASIC Services.* This level of depository library would serve as an information center in which there would exist a small government document collection and a computerized gateway to electronic government information located elsewhere. The service might be focused more on self-help and on-demand levels. There would be a high cost per transaction but a small fixed cost.
- *INTERMEDIATE Services.* This level of depository library would maintain a larger government document collection and some electronic information and gateways to other electronic information located elsewhere. This library might devise products that would work well through the gateways and might invest in developing value-added approaches to the government information. The service would include more mediation and synthesis than the Basic level.
- *FULL Services.* This level of depository library would contain research level government documents and a full range of electronic information and the most sophisticated gateways to other electronic information. The depository collection would be supplemented by related, locally available databases. The level of service would include the highest levels of value-added characteristics. There would be developed software packages and other approaches that would change wholesale government information into retail government information. The cost per transaction would be low and the fixed cost high.

A second kind of change that might take place within the program involves depository library cost recovery for performing certain functions. Depending on the nature of the information itself and the extent of local investment, depository libraries may begin to recover some or all of the costs associated with adding values to electronic government files.

There remains the commitment to the role that libraries have always played: provider of no-fee access for the general public to government documents. What is highlighted by the prominence of electronic information is that not all government information is the same and that the level of user accessibility provided for electronic products varies tremendously depending on the system characteristics provided by the government or added to it by libraries or other intermediaries. Government information defined as essential for fulfilling the citizenship information needs of the public and for fulfilling government responsibilities should be distributed to depository libraries in a manner that allows libraries to make it available at no-fee.

What may result from such a clarification or refocusing is another category of information—that of considerable importance to a narrow segment of society, important enough to justify agency efforts to collect or generate the file, but that is too costly to justify full tax subsidized value-added enhancements. This kind of information might be distributed to depository libraries on terms that allow some cost recovery mechanism from a source outside the library—the user, a government agency, or perhaps a consortium of users. Therefore, this second possible change for the program, that depository libraries may begin to recover all or some of the costs associated with adding value to some electronic government files, is dependent upon the nature of the information itself and the extent of local investment made in order to compensate for costs not incurred by the government.

For example, some form of reimbursement may be made to support public use of a deposited government file that has been significantly enhanced by locally developed software. The point is: if depository library program policies define that the library is to add values to enhance an electronic file, that policy may also define the level of value to be added, who is to be served, and how and who is to pay to support the system.

CONCLUSION

Technology offers opportunities that may be to the advantage of users and both public and private sectors. However, political decisions about meeting government obligations to provide information should not be contingent on format.

The U.S. government's obligation to be accountable to citizens, and to make available information created or collected with tax dollars, is fulfilled in part through partnership with public and academic libraries. Circumstances warrant a reassessment of library responsibilities with a view to new opportunities made feasible by technology.

ACKNOWLEDGMENT

This article is an abridgement of *Technology & U.S. Government Information Policies: Catalysts for New Partnerships* (Washington, D.C.: Association of Research Libraries, 1987). (Available as a separate report for $5 [prepaid].) Also included within (ARL) *Minutes of the 110th Meeting, May 7–8, 1987, Pittsburgh, Pennsylvania.*

REFERENCES

1. See R. S. Taylor, *Value-Added Processes in Information Systems* (Norwood, NJ, Ablex Publishing Corp., 1986).
2. See Association of Research Libraries, *The Changing System of Scholarly Communication* (Washington, DC, ARL, 1986). (Available for $1, prepaid.)

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Membership: 119 research libraries in the United States and Canada.

Founded: 1932

Programs: Current areas of activity include: scholarly communication, building library collections and ensuring widespread availability and access to them, preservation of research library materials, staffing for research libraries, library education, information policy and legislative affairs relating to research libraries and scholarship, and library management and statistics.

Major projects include: the North American Collections Inventory Project, the Government Information in Electronic Format initiative, the National Register of Microfilm Masters (NRMM) Recon Project, the ARL Statistics Program, the OMS Academic Library Development Program, the OMS Training Program, and the OMS Systems and Procedures Exchange Center.

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Mr. **Wise**. Thank you, Ms. Gapen.

Our final witness on the panel will be Nicholas Mercury, director, information services, System Planning Corporation, representing the Special Library Association.

STATEMENT OF NICHOLAS E. MERCURY, DIRECTOR, INFORMATION SERVICES, SYSTEM PLANNING CORPORATION, ON BEHALF OF THE SPECIAL LIBRARY ASSOCIATION

Mr. **Mercury**. Thank you for this opportunity to present testimony on behalf of the Special Libraries Association [SLA].

SLA is an international professional society of more than 12,500 very sexy librarians—[laughter]—information specialists, managers, and brokers serving industry, business, government, research, and educational agencies as well as special departments of public and university libraries in both the for profit and not for profit sectors.

Regardless of the type of information center or library, members of my profession would agree that we are deeply entrenched in the information age. It is the age of competitiveness as well.

Whether we are competing for Government contracts or in the midst of a leveraged buyout there is a need to be able to access Government information in a timely and cost effective manner. Obtaining such information has become increasingly difficult with obstacles preventing or delaying access to reports, studies, and statistics that are supported by tax dollars.

In your letter of invitation, Congressman Wise, you stated that current issues relating to freedom of information, the dissemination of Government information through electronic means and an apparatus for establishing Federal information dissemination policies would be discussed. I would be happy to cover these points.

The Freedom of Information Act [FOIA], has become an increasingly important tool for citizens and organizations to obtain information collected and maintained by the Federal Government. The 1980's however has seen an assault on the intent and applicability of FOIA.

My organization utilizes the FOIA making requests to various Government agencies. In our case and in the case of many of my colleagues in other corporations, FOIA requests are not always made by the librarian or within the context of the information center. In many cases these requests are actually done by a third party. I would like to cite a few examples.

Many of the requests generated have to do with obtaining Government records on awarded contracts. That is, if a proposal was not selected we will ask for information on the proposal which received the Government work. The FOIA requires a response within 10 working days of the receipt of the request. Very often, this is not the case. Followup letters or phone calls are required in order to acknowledge receipt of the request and to ascertain an approximate date of response.

Another member in a Fortune 500 corporation does not place the FOIA requests either. However the person within her organization who does told her that within the last 2 to 3 years he has found that much environmental data appears to be missing from Federal files. On a number of occasions he has been referred to a State for data. In one particular case the Environmental Protection Agency referred him to the State of Virginia for the material he wanted on air pollution. However, he was told by Virginia officials that in order to obtain that information he had to be a State resident, which he was not. State laws are very uneven and subject to varying rules. This was not the intent of the FOIA.

In one last example of problems we have found, information was requested on toxic materials. The data received was clearly marked "confidential." Requestors at my colleagues' company returned the data to the agency unread. They did not want to read anything which was confidential. It was proprietary chemical data. Such an incident would make other corporations nervous about sharing information which is supposed to be confidential but due to an error is publicly distributed.

This is quite ironic. Some information which should rightly be shared is requested and could not be obtained and in other cases, material which is not for public review is freely disseminated.

Another colleague mentioned to me that the Department of Energy does an outstanding job on their FOIA requests. FOIA is a great example of our Nation's view that citizens have the right to know what their Government should and should not do but all agencies must adhere to the legislation. The FOIA should be reexamined by Congress in light of the fact that so much Government information is in electronic formats.

SLA has strongly supported the dissemination of Government information to depository libraries in electronic formats. We hasten to add, however, that we hope that the reliance on such new formats does not eliminate those which are already in place so that people who do not have access to these new technologies can still obtain Government information.

As much as some of us think we are heading for a paperless society, the reality is that some data is still stored on paper and not all citizens who want or need to access Government information can do so via computer. Having said that, we applaud the efforts of many Government agencies to move into the technological age and utilize different formats in which they collect, maintain, and disseminate information.

Information should be available regardless of format. Unfortunately there seems to be some thinking that electronically produced information must be treated differently. SLA believes this is not the case.

We are acutely aware of the private sector concerns over the dissemination of Government information in electronic formats. SLA thinks that with burgeoning technologies there is room for private sector involvement in this arena. However, SLA is concerned that a market-driven environment where public information is disseminated only to those people who can pay for such data does not fulfill the Government's responsibilities to the public.

The private sector is under no obligation to make information available to the public at large at an affordable price nor to keep such information easily accessible or readily available.

We support the implementation of pilot projects initiated under the leadership of the Joint Committee on Printing and the Government Printing Office, which would disseminate electronic information from selected Government agencies to depository libraries. We hasten to add that as these electronic products become available, some questions need to be posed.

If the depository system starts utilizing electronic Government products, will there be adequate training documentation provided to the libraries? Will there be any type of training support for those participating? Will there be a mechanism provided for feedback from librarians as well as end users and is some type of evaluation process being considered?

We have posed these questions to the Joint Committee on Printing as well and hope that consideration is given to these concerns.

The Paperwork Reduction Act of 1980 was seen as a way for the Government to cut down on burdensome paperwork, improve efficiency, effectively use the information it generated, and reduce the cost that the Government encounters in managing its information related activities.

In order to comply with provisions of the act, the Office of Management and Budget's newly created Office of Information and Regulatory Affairs [OIRA], issued Circular A-130, Management of Federal Information Resources.

In May 1985, SLA offered its comments on A-130. While commending OMB for its efforts to provide more coordination of Federal information resources and its encouragement to convert printed data sources to automated systems, SLA raised issue with language in the circular which called for more reliance on the private sector to disseminate Government data.

While the Paperwork Reduction Act of 1980 includes many ambiguities, it does require maximizing the utility of the information which the Government collects, as well as increasing the coordination of Federal information policies and practices. It would be safe to say that members of the library/information community have not seen these congressional mandates implemented by OMB.

SLA sees the need for an entity within the Federal Government whose primary responsibility is the formulation, evaluation, and implementation of standards or policies for agencies to make information available. What we have seen over the past 8 years or so is the lack of respect from OIRA staff for the knowledge base within agencies. OMB is budget driven, and we see this as conflicting with any viable attempts on its part to assist and work with agencies to utilize the information it generates for the public good.

There is no doubt that the Government must contain its ever-increasing deficit and cuts must be made. We would not argue with that.

The public has the right to know what the Government is doing and how it operates because these activities eventually affect all of us. Basic Government information should be readily available in all formats.

With a new administration at the helm, we are optimistic. We recently noted an article in the Washington Post which reported that the new Director of OMB had deferred to the decision of an agency to issue a questionnaire. Basically, the Director said if the agency felt that the questionnaire would be useful, plans for the implementation should go ahead. This is what we mean when we say that there should be some deference to an agency's knowledge base.

We ask the Congress to closely review the role of OIRA in managing our Government's information. This needs to be a priority when the Paperwork Reduction Act is reauthorized this year. Should paperwork reduction and information management be handled by the same organization? We think it should not.

There are four final points we would like to make.

One, we think that over the past 8 years congressional intent has not always been followed when agencies have promulgated regulations in the information management area. Perhaps with the new administration we will not see this happening as often.

Two, there are so many innovative and creative programs in Federal agencies using electronic means to collect, maintain, and disseminate information, but there does not seem to be any apparatus within the Government which enables other agencies or those of us outside of the Government to determine who is doing what. From personal experience, both NTIS and DTIC, the Defense Technical Information Center, are good examples of Government data base producers that do provide documentation training and end user feedback, and I think both of them are doing an outstanding job.

Three, the Depository Library Program has been successful and serves so many different constituencies, from students to the business community. We sometimes forget that it is there and that it needs consistent support, especially up here on Capitol Hill.

Four, there must be Government support for the management and use of its information. We need to look at other countries with whom we compete industrially for examples of successful Government management of information.

Peter Drucker wrote in the Wall Street Journal:

> Information is the manager's main tool, indeed the manager's capital, and it is he who must decide what information he needs and how to use it. I feel information is the general public's main tool and the public must decide what information he wants and how to use it.

Thank you.

[The prepared statement of Mr. Mercury follows:]

Special Libraries
Association

1700 Eighteenth Street, N.W.
Washington, D.C. 20009
(TEL) 202/234-4700
(FAX) 202/265-9317

STATEMENT OF

THE SPECIAL LIBRARIES ASSOCIATION

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON GOVERNMENT INFORMATION,

JUSTICE, AND AGRICULTURE

ON

FEDERAL INFORMATION DISSEMINATION

POLICIES AND PRACTICES

MAY 23, 1989

David R. Bender, Executive Director
Richard D. Battaglia, Associate Executive Director

Thank you Congressman Wise and members of the Subcommittee for this opportunity to present testimony on behalf of the Special Libraries Association. I am Nicholas Mercury, Director, Information Services with System Planning Corporation in Arlington, Virginia. System Planning Corporation is a company specializing in quality research and the innovative design and development of high-technology systems for national security.

SLA is an international professional society of more than 12,500 librarians, information specialists, managers and brokers. Special librarians serve industry, business, government, research, and educational agencies, as well as special departments of public and university libraries in both the for profit and not for profit sectors.

The Association and its members are concerned with programs whereby public documents and government information are easily accessible and readily available to the special library and information community and where knowledge and information are disseminated for the general welfare of all users. Special librarians rely heavily on electronic information and SLA has a special interest in advancing the uses of new information technologies.

This Subcommittee is to be commended for holding these hearings. In January of this year, the SLA Board of Directors passed a resolution, which is attached, calling on the Executive and Legislative branches of our government to resolve federal information collection, dissemination and access issues and urged "that public hearings be held to discuss federal policy issues with the broadest possible representation of information collectors, disseminators and users from both the public and private sectors." We are pleased that Congress is currently examining many of these issues.

Overview

Regardless of the type of library or information center we are in, I think that members of the library/information profession would agree that we are deeply entrenched in the "Information Age." And for many in the profession, it is the "Age of Competitiveness" as well. Whether we are competing for government contracts or in the midst of a leveraged buy-out, there is a need to be able to access government information in a timely and cost-effective manner. Obtaining such information has become increasingly difficult with obstacles preventing or delaying access to reports, studies and statistics that are supported by tax dollars.

Budget constraints, threats to national security and exploding technological advances have dramatically changed the way in which the U.S. Government has collected and disseminated its information. The 1980's ushered in a new Administration which, over the course of the decade, constructed numerous barriers to the free flow of taxpayer-supported information.

The overall theme of federal information dissemination policies and practices brings to mind a wide array of recent government directives in this decade which did have or would have had a negative impact on the way government information was handled. Issues such as contracting-out of federal libraries, the proposed privatization of the National Technical Information Service, imposition of access fees on enhanced service providers by the Federal Communications Commission, changes to the 1990 decennial census questions and restrictions on sensitive, but unclassified information have been of great concern to the library/information profession.

In your letter of invitation, Congressman Wise, you stated that current issues relating to freedom of information, the dissemination of federal government information through electronic means and an apparatus for establishing federal information dissemination policies would be discussed. I would be happy to cover each point.

Freedom of Information

The Freedom of Information Act (FOIA), the landmark legislation enacted into law in 1966, began a trend toward open government, which was to extend into the 1970's with the strengthening of the Act in 1974 and the passage of the Government in the Sunshine Act in 1976. FOIA has become an increasingly important tool for citizens and organizations to obtain information collected and maintained by the federal government. The 1980's, however, has seen an assault on the intent and applicability of FOIA.

The company in which I work, System Planning Corporation, does utilize the FOIA, making requests to various government agencies. In our case, and in the case of many of my colleagues in other corporations, FOIA requests are not made by the librarian, or within the context of the information center. In many cases, these requests are actually done by a third party.

I would like to cite a few examples. Many of the requests generated in my organization have to do with obtaining government records on government awarded contracts. That is, if our proposal was not selected, SPC will ask for information on the proposal which received the government work. The FOIA requires a response within 10 working days of receipt of the request. Very often this is not the case. Follow-up letters or phone calls are required in order to acknowledge receipt of the request and to ascertain an approximate date of response.

Another SLA member in a Fortune 500 corporation said that she does not place FOIA requests, either. However the person within her organization who does deal with FOIA told her that in the last two to three years, he has found that much environmental data appears to be missing from federal files. He has, on a number of occasions, been referred to a state for data. In one particular case, the Environmental Protection Agency referred him to the State of Virginia for the material he wanted on air pollution. However, he was told by Virginia officials that in order to obtain that information, he had to be a state resident; which he was not. State laws are very uneven and subject to varying rules. This was not the intent of the Freedom of Information Act.

In one last example of problems we have found with agencies not adhering to FOIA, information was requested on toxic materials. The data received was clearly marked "Confidential." The people at my colleague's company returned the data to the agency -- unread. They did not want to read anything which was confidential. It was proprietary chemical data. Such an incident would make other corporations nervous about sharing information which is supposed to be confidential, but due to an error, is publicly distributed.

This is quite ironic -- some information which should rightly be shared, is requested and cannot be obtained and in other cases, material which is not for public review, is freely disseminated.

FOIA is a great example of our nation's view that citizens have the right to know what their government should and should not do. But all agencies must adhere to the legislation and not just to the whim of bureaucrats. The FOIA should be re-examined by Congress in light of the fact that so much government information is in electronic formats. There are many issues to be resolved concerning the role of FOIA in responding to requests for information which are stored in databases or other electronic means.

Electronic Dissemination of Information

SLA has strongly supported the dissemination of government information to depository libraries in electronic formats. We hasten to add, however, that we hope that the reliance on such new formats does not eliminate those which are already in place, so that people who do not have access to these new technologies can still obtain government information. As much as some of us think we are heading for a "paperless society", the reality is that some data is still stored in paper and/or hard copy and not all citizens who want or need to access government information can do so via a computer.

Having said that, we do applaud the efforts of many government agencies to move into the technological age and utilize different formats in which they collect, maintain and disseminate information. In a recent letter SLA cosigned with the American Library Association, the Association of Research Libraries and the American Association of Law Libraries, sent to Representative Harry Reid, Chairman of the House Subcommittee on Legislative Appropriations, it was noted that:

> "In just one year, 1987, civilian agencies disseminated over 7,500 government information products in electronic format. However, these 7,500 products were not available to the public through traditional channels such as the GPO sales program, the depository program, and the Consumer Information Center. This means that those channels specifically created by Congress for public access to government information are now almost completely limited to paper and microfiche distribution while the rest of the government is moving to electronic dissemination."

As Kathleen Heim noted in her article "National Information ..licy and a Mandate for Oversight by the Information Professions" which appeared in Government Publications Review (1986): "the best example of a nationally implemented information access policy is the system of depository libraries that provide government-produced information to every Congressional district."

That information should be available, regardless of format. Unfortunately, there seems to be some thinking that electronically produced information must be treatly differently. SLA believes this is not the case.

We are acutely aware of the private sector concerns over the dissemination of government information in electronic formats. SLA thinks that with burgeoning technologies there is room for private sector involvement in this arena. Indeed, there has been much innovation and creativity by the private sector in marketing and disseminating government-related products. However, SLA is concerned that a market-driven environment where public information is disseminated only to those people who can pay for such data does not fulfill the government's responsibilities to the general public. The private sector is under no obligation to make information available to the public at large at an affordable price, nor to keep such information easily accessible or readily available.

There is always a "bottom line" in the business world. In this instance, the bottom line we are dealing with here is that government information is made possible with the tax dollars of American citizens. It does not seem equitable that citizens have to pay for that information twice.

We support the implementation of pilot projects, intiated under the leadership of the Joint Committee on Printing and the Government Printing Office, which will disseminate electronic information from selected government agencies to depository libraries. Although we realize that there will be costs for the depository libraries associated with the start-up of some of the projects being considered, we view them as minimal compared to the avenues these new technologies will open, not only for libraries, but the end-user as well.

But we hasten to add that as these electronic products become available, some questions need to be posed. If the depository system starts utilizing electronic government products:

- Will there be adequate training documentation provided to the libraries with each project?

- Will there be any type of training support for those librarians participating through GPO's Library Services Program?

- Will there be any mechanism provided for feed-back from librarians as well as end-users? Is some type of evaluation process being considered?

We have posed these questions to the Joint Committee on

Printing as well and hope that consideration is given to these concerns.

We did note that in a recent Federal Register Notice issued by the Patent and Trademark Office on automated search systems fees, the agency stated that:

> "The Office (PTO) will be making both search systems available to the public free of charge during this rule-making process for the purposes of self-education and training (familiarization)."

We view this as a realization on the part of this agency that a new electronic system cannot be utilized without training and an understanding of the new technology by employees and the public at large.

Establishment of Federal Information Policies

The Paperwork Reduction Act of 1980 was seen as a way for the government to cut down on burdensome paperwork, improve efficiency, effectively use the information it generated and reduce the costs that the government encounters in managing its information-related activities. In order to comply with provisions of the Act, the Office of Management and Budget's (OMB), newly created Office of Information and Regulatory Affairs (OIRA), issued Circular A-130, "Management of Federal Information Resources", which deals with four general areas: 1) information collection; 2) information sharing; 3) economic and cost considerations; and 4) information dissemination, distribution and publication.

In May of 1985, SLA offered its comments on A-130. While commending OMB for its effort to provide more coordination of federal information resources and its encouragement to convert printed data sources to automated systems, SLA raised issue with language in the Circular which called for more reliance on the private sector to disseminate government data. SLA disagreed with such a concept:

> "Maximum feasible reliance should never be placed on the commercial sector for the dissemination of government products and services. Since the most expensive aspect of information -- its creation or collection -- is accomplished with public money, the public should continue to have access to this information through depository libraries and agency distribution. Special libraries rely on the present dissemination framework which ensures equal access to government data whether it is for nominal fees from GPO, free access through depository libraries, or agency distribution."

While the Paperwork Reduction Act of 1980 includes many ambiguities, it does require maximizing the utility of the information which the government collects, as well as increasing the coordination of federal information policies and practices. It would be safe to say that members of the library/information community have not seen these Congressional mandates implemented by OMB/OIRA.

Obviously members of Congress have been displeased with OIRA's handling of government information management. There have been numerous attempts by Congress to "defund" OIRA since 1983, when the original Paperwork Reduction Act provisions expired. Although OIRA remains within OMB, close Congressional scrutiny continues.

SLA sees a need for an entity within the federal government whose primary responsibility is in the formulation, evaluation and implementation of standards/policies for agencies to make information available. What we have seen over the past eight years or so, is a lack of respect from OIRA/OMB staff for the knowledge base within agencies. OMB is budget-driven and we see this as conflicting with any viable attempts on its part to assist and work with agencies to utilize the information it generates for the public good.

There is no doubt that the government must contain its ever-increasing deficit and cuts must be made. We would not argue with that. But what we have seen is an attempt by the previous Administration to ignore some basic rights citizens of this country expect to exercise. The public -- all members of our society-- has the right to know what the government is doing and how it operates, because these activities eventually affect them. Basic government information should be readily available in all formats. OMB through OIRA has attempted to cut back on information, in some cases, for political reason, such as the haggling we witnessed in 1987, between staff of OIRA and the Bureau of the Census over questions OMB wanted deleted from the 1990 decennial census test. These questions related to housing, energy, transportation, unemployment, fertility and population mobility. Many in the library/information community saw this as an attempt to remove questions which could have elicited embarrassing statistics for the previous Administration.

However, with a new Administration at the helm, we are optimistic. We recently noted an article in the Washington Post which reported that the new Director of OMB had deferred to the decision of an agency to issue a questionnaire. Basically, the Director said that if the agency felt that the questionnaire would be useful, plans for its implementation should go ahead. This is what we mean when we say that there be some deference to an agency's knowledge base.

OMB/OIRA should not have the final word on some information management decisions without some respect for the people who are managing this information.

We ask the Congress to closely review the role of OIRA in managing our government's information. This needs to be a priority when the Paperwork Reduction Act is reauthorized this year. In addition, there needs to be clearer direction given to OIRA or any entity which will operate under the Paperwork Reduction Act -- and that is, should paperwork reduction and information management be handled by the same organization? We think it should not.

Conclusion

There are a number of final points we would like to make. With a new Congress, obviously interested in the issue of government information and its management and a new Administration in the White House, we are optimistic that the two will work together to coordinate policies and practices in this arena.

We think that over the past eight years Congressional intent has not always been followed when agencies (particularly OMB) have promulgated regulations in the information management area. Perhaps with new Administration officials in place we will not see this happening as often.

There are so many innovative and creative programs in federal agencies using electronic means to collect, maintain and disseminate information, but there does not seem to be any apparatus within the government which enables other agency people or those of us outside of the government to determine who is doing what.

The depository library program has been successful and serves so many different constituences -- from students to business people -- that sometimes we forget that it is there and that it needs consistent support, especially up here on Capitol Hill.

There must be government support for the management and use of its information. We need to look at other countries with whom we compete industrially, for examples of successful government management.

SLA continues to be concerned with government actions which impede the free flow of unclassified information. John Shattuck and Muriel Morisey Spence, both of Harvard University, noted in a recent report on government information controls, that the trends of the past decade related to information policy can be reversed. But it will not happen because it should. It can happen if the new President and his policy makers realize the vast potential of the Information Age and recognize the harm done by impeding the flow of information. Congressional hearings, such as this, greatly help our cause. Thank you.

RESOLUTION ON FEDERAL INFORMATION POLICIES FOR THE BUSH ADMINISTRATION AND 101st CONGRESS

WHEREAS, The use of up-to-date information technology is essential to the operation of the United States government in carrying out its vital functions; and

WHEREAS, The United States government has no coordinated information program and has not kept up with the dramatic technological advances which have been made in this Information Age; and

WHEREAS, Action is urgently needed by both the Executive and Legislative branches of the U.S. government to resolve federal information collection, dissemination and access issues; and

WHEREAS, The Bush Administration and the 101st Congress have a great opportunity to make lasting improvements to federal information systems and services to the citizens of the nation; and

WHEREAS, The Special Libraries Association is an international professional association of more that 12,500 special librarians and information specialists; now, therefore, be it

RESOLVED, That the Special Libraries Association calls upon the members of the Bush Administration and the 101st Congress, in a coordinated effort, to review federal information policy alternatives as identified in the U.S. Office of Technology Assessment's recent report titled, "Informing the Nation: Federal Information Dissemination in an Electronic Age"; and, be it

FURTHER RESOLVED, That public hearings be held to discuss federal policy issues with the broadest possible representation of information collectors, disseminators and users from both the public and private sectors, and, be it

FURTHER RESOLVED, That the new President, with the advice and consent of Congress and input from the library and information community, make appointments from people who are knowledgeable of the needs and concerns of information practitioners to federal agencies, commissions and other relevant bodies which are key to the creation and/or implementation of national information policy, in particular the Government Printing Office and the National Commission on Libraries and Information Science.

Adopted by the Board
of Directors
Special Libraries Association
San Francisco, California
January 26, 1989

Resolution on the Dissemination of Government Information in Electronic Formats

WHEREAS, The Special Libraries Association and its members are concerned with programs whereby public documents and government information are easily accessible and readily available to the special library and information community and where information and knowledge are disseminated for the general welfare of all users; and

WHEREAS, Special librarians are heavy users of electronic information and the Special Libraries Association has a special interest in advancing the uses of new information technologies; and

WHEREAS, The Special Libraries Association has consistently supported full funding for the depository library program; and

WHEREAS, The Joint Committee on Printing has issued a report titled, "The Dissemination of Information in Electronic Format to Depository Libraries, Proposed Project Descriptions;" and

WHEREAS, The Special Libraries Association is an international professional association of more than 12,500 special librarians and information specialists, with 10 percent of its membership in Canada; now, therefore, be it

RESOLVED, That the Special Libraries Association urges the Government Printing Office and the Joint Committee on Printing to move with all deliberate speed to implement the Federal Depository Library Electronic Dissemination Information Project.

Adopted by the Board
of Directors
Special Libraries Association
Washington, D.C.
October 21, 1988

Mr. **Wise**. Thank you, Mr. Mercury.

I want to thank this panel for proving me wrong earlier this morning. I had a friend from out of town. We had breakfast and then he asked me what I was going to do today, and I said I was chairing this hearing, and he asked what is was about, and I said dissemination of information. He said: "Is it going to be very exciting?" I said, and I quote, "Well, if you're looking for sex or sensationalism, I wouldn't come over." You proved me wrong on both counts. I want to thank you. [Laughter.]

He probably went to Energy and Commerce or somewhere, and what a mistake that was.

I understand that there are many Government publications that are never made available to depository libraries. These are sometimes referred to as fugitive documents. How serious a problem is this? Does anyone care to comment on this? Do you want to be granted immunity, or what? [Laughter.]

Mr. **Shill**. Consultation period on this.

I think that is probably a growing problem as more and more of the products of the Government move from print into electronic format and we may not have availability in electronic format. The electronic formats give us tremendous opportunities for the rapid collection, indexing, and dissemination of information, and I think we would support their use to the fullest there, but we are seeing a slight decline in the documents included in the Depository Library Program. We have also seen in a few cases, especially with microfiche documents distributed, some defaults on the part of Government contractors who have been assigned to develop the products and get them out. The GPO has had a great deal of difficulties with these several contractors over the last few years.

I would say it is a growing problem, but it is really difficult to get a handle on the magnitude of the problem at this point. I will defer to others who might want to comment.

Mr. **Wise**. Anyone else?

Ms. **Gapen**. I would just say that faculty members on the campus often come up with something that we haven't gotten through regular channels, from whatever activity they may be involved in, and our intent with the information system is to then convert those to machine readable form and mount them. In fact, we may be able soon to tell a little more what is flowing through what channels and why it is useful or not.

Mr. **Wise**. Does OMB have any specific responsibility under the Depository Library Act? My next question then is whether you think things might be better if OMB were given an increased role in enforcing the Depository Library Act.

Ms. **Kranich**. I think OMB's record so far with managing information has not been promising to librarians, so we would be quite concerned to see OMB take a greater role if it wasn't better defined than the current role.

Ms. **Gapen**. If I could speak to that just a tad as well. During the last 2 years when GPO has been attempting to make a transition to include electronically formatted agency materials, OMB has often told agencies that they don't have to submit those materials to GPO nor to the depository program. In fact, there are very few electronically formatted materials in the depository program. Of the 7,500 or so agency produced items, there might be only two or three in the Depository Library Program.

The notion of what should be accessible to the public at no fee as part of the depository program is still very much in flux. My own reading of OMB's first recommendation on the revision of A-130 is that their tendency is still to focus on the private sector and not to deal with the issues related with the public need to know, such as a core of electronically formatted Government information available to the public at no fee.

It has not been encouraging to those people participating in the depository program to see OMB's directions.

Mr. **Wise**. Anyone else?

[No response.]

Mr. **Wise**. Has anyone ever considered any type of enforcement action: for instance, a lawsuit to make an agency distribute documents to depositories?

Ms. **Gapen**. We have not.

Mr. **Mercury**. We have not.

Mr. **Shill**. I have heard the idea raised, but mainly in Washington.

Mr. **Wise**. Among lawyers, I suspect.

Mr. **Shill**. Among lawyers, right, which I guess is good for business. This is very difficult for people outside this immediate area to do. At times, as Dr. Gapen was mentioning, it is difficult to determine what has been done or by whom, and the actual discovery of a gap may postdate the need for that information by some period of years. So I would think that the filing of individual lawsuits and the time that they would take to go through the courts would be a real impediment to getting necessary information out to the people who actually need it in a very timely manner.

Mr. **Mercury**. SLA has no knowledge of any such suits.

Ms. **Kranich**. We have tended to resort more to FOIA suits than we have to suits related to the Depository Library Program in order to get information, and some of that information, in fact, is sometimes depository library information in nature.

Mr. **Wise**. FOIA suits, though, can move slowly also, can't they?

Ms. **Kranich**. Quite slowly. I think we will hear more about that in the next panel.

Mr. **Wise**. I said in my opening statement that the Government cannot provide every type of information product and service to every potential user. I just wondered whether you agreed with that statement?

Ms. **Gapen**. The ARL does agree with that, and attached to our testimony is an executive summary of the study that we did on Government information in electronic format. There are two important elements, I think, in that ARL report. The first is that not every piece of Government information needs to be made available directly to people at no fee via the depository program or from agencies. In fact, we suggest a taxonomy of identifying characteristics of Government information that might help you make decisions.

Is the information highly important to creating public policy? If so, that would be on the side of distributing it at no fee. For universities, is it important to research? Does it have longstanding implications? If it does not, it possibly does not need to be submitted.

I think that taxonomy approach is important for all of us in making decisions because we are going to make decisions. In this unautomated system that I described to you, we made hundreds of decisions about how we were going to invest money to get the greatest good for the amount of money that we had.

In the second important part of that ARL report we talk about the cost of each part of the information chain being constructed, the cost to the agency to create it, the cost to disseminate it, the cost for a depository library to mediate access to it, and then the cost to the user. What we are seeing with electronic information is that the costs and the savings are different than they are with paper-based Government information.

We need to understand how those costs are shifting so that we can determine how best to invest the funding in the continued support of the depository program, and those two elements coming together are one of the things that agencies and users need to be discussing.

Mr. **Wise**. I am going to save the rest of my questions. What I would like to do is submit them to each of you in writing and would appreciate a response. We will leave the record open for that.

Mr. McCandless.

Mr. **McCandless**. Thank you, Mr. Chairman.

I listened with a great deal of interest because the disciplines here do have a similarity yet there is a variation in the way you kind of approach this. From a layman's point of view, the amount of information that I receive is overwhelming. We referred to it finally as the governmental paper blizzard.

In Wisconsin you have certain special interests. You have research projects and so forth that would differ, I am sure, from West Virginia. Conversely, New York. If we were talking about Florida, that would still be different.

How do you make an assessment of what you feel would be in the best interest of your library for the purposes on that campus or in that location the library is intended to serve? Ms. Gapen.

Ms. **Gapen**. It is really not that complicated a situation, because what you have in a typical situation is a faculty member—and I'll use a faculty member as an example, but it could just easily be a student or a citizen who comes to the library—faculty member who has a research question, and you have, then, a librarian who is knowledgeable about that disciplinary area and about publishing patterns and about new trends in scholarly communication, and those two come together and they talk about that research topic, and between them, they share enough information to construct the first set of filters for choosing from that avalanche of information that can simply overwhelm you, and that discussion is followed by another discussion with another faculty member, and in a period of time, then, you build a picture of what people are working on, a general pattern of the kinds of information most likely to be important, and as new things come along, you can fit it in more easily.

I liked your question very much, because it focuses on exactly what we should be thinking about: How is this all used?

If we look at the CD-ROM product that was demonstrated here and the other hundreds of ROM products that are available, many of them with different retrieval mechanisms and so forth, we know, from the way people are already using electronic information, that their use is changing. They are beginning to formulate the research questions differently as they have access to online electronically formatted information.

Therefore, we want, I think, as much variety as is practical in the way that we look at the design of the retrieval mechanisms. The way that we look at standardization is to keep the options open until we can see how much the use is going to change and respond to it. You, the person who needs the information, must come together with the mediator who knows how to provide the gateways into the information, until you reach a level of expertise where you can wind your way through the various information resources by yourself.

Mr. McCandless. Did you have a comment? Whoever wants to comment——

Mr. Mercury. I was thinking, first there is that frustration with the enormous amount of information out there. From the point of view of an information professional in the private sector, yes, it's all out there and no one person can use it all, but I would like to be confident that if one of my researchers came to my organization asking for a piece of information that he was fairly certain was out there somewhere in the Government information community, that we would be able to have access and retrieve it for him. I think that's the important thing. There is so much of it. Not one person uses it all, but when someone steps forward and says, "I need x, y, and z," we can be confident that, through GPO, NTIS, DTIC, or whatever, we will be able to provide that piece of information for the user.

Ms. Kranich. Libraries have a long history of resource sharing. What we do at the local library is build our collections to respond to the needs of our constituents. So, if we have a geology department, we're likely to have that geology CD-ROM. If we don't have a geology department, like at NYU, we probably won't get that CD-ROM. We fine tune our collections to really represent the teaching and research interests of our students and faculty, and then, we network with each other and we share resources through highly sophisticated technological telecommunications networks, et cetera, and through standardized information products throughout the world to find those information products that we can't have locally.

We not only fine tune our own collections and the way we staff our libraries to have specialists in the areas that we specialize in as institutions, but we do the same for most of the depository libraries. Every depository library is not a full depository. In fact, there's very few depositories that are full depositories. Most of ours, like NYU's, are selective and we try to only collect those items that we think our constituents, being the general public or our teaching faculty and students, might be interested in, but through these sophisticated networks, which we encourage the Federal Government to get more involved with, we can then identify information at remote sites and share information that we might not have as great a need for in an immediate sense.

Mr. Shill. I would just like to add two additional thoughts to the excellent comments from the other three witnesses, and right now, one is, first, as both user and an intermediary, very sympathetic to the problem of information overload which you're describing.

I have two profiles—research interest profiles stored in the DIALOG information service's mainframe computer. We called them SDI, or selective dissemination of information profiles. One is on libraries for information policy and Government, and so, every month, when the ERIC data base is reloaded in DIALOG, I get a new list of printouts which also contain the abstracts of these individual articles or reports which may be in there. I will frequently just read the abstracts and have an idea of what is there, rather than reading a 30- or 40-page document and feeling consumed by it. This helps me very much, as an information consumer, and this is also a service we provide for many of our faculty members.

Second, on addressing the needs of our own users, we are also proactive in the library community ourselves. We have an important role in collection development, as well as the provision of new services, and one thing that I do in my library, which serves engineering, among other disciplines, is take a look at State economic development needs, too. We are trying to bring in resources which will support research in high-tech areas, even if faculty members may not already be asking for this at this moment. We want it to be there when they need it.

Senator Byrd has sponsored something called Software Valley to bring high-tech industries into West Virginia, help diversify our economic base. We also work with the Monongahela River Development Basin Cooperative, which crosses the borders between West Virginia and Pennsylvania. So, we also anticipate needs. We use both collection development and knowledge of our clienteles, and also, we use the new technologies to try and get a compressed kind of Reader's Digest version of what is out there, get an overview, and then identify what we really need to read and delve into it in-depth.

Mr. McCandless. Just a quick followup, if I may: Now, you have all done your job and everybody is happy, because when they present themselves—"I have got just what you need," big smile on your face, and you have satisfied the inner soul. As a librarian, you now have it. All right. There is a limited amount of area to any facility, as time passes and accumulation takes place. Now, once you have this information and it is on the shelf or in some form or another, what kind of a system do you use to begin to call it when it's not being used, in terms of making room, in whatever form, for the newer—more material or used information come on line? How do you decide that? If somebody has not asked for it for 90 days, then you do not order it or something like that?

Ms. Kranich. Ninety years in research libraries is more like it. We do the same kind of profiling with deaccessioning as we do with accessioning. We look to preserving some materials on microfilm or other kind of micro formats. We have been working with the Library of Congress at putting older titles on various types of optical disk formats and, therefore, having a network where we know one library in this country has the last copy, if we need to go to it, and we put that information in a national data base. So, we have all different kinds of scientific ways to make sure we not only acquire the right information but also deaccession—weed our libraries of the kind of information we probably will not need, but making sure there is at least a copy somewhere.

Ms. Gapen. Basically, we angst.

Mr. McCandless. Basically, you what?

Ms. Gapen. Angst, worry, deeply troubled. The people who make those——

Mr. McCandless. Those long winters up there. I understand that Wisconsin has the highest rate of brandy consumption per capita. Is there any truth to that?

Ms. Gapen. Absolutely not. That is entirely true. Angst and brandy go together.

Mr. McCandless. You opened the door a little earlier, you know.

Ms. Gapen. Well, I am sorry. I did do that.

Mr. McCandless. I spend my summers in Land O' Lakes.

Ms. Gapen. Have you ever been to Stoughton? You know, Stoughton is a great Norwegian community in Wisconsin, and I went to Stoughton a couple of weeks ago.

Mr. McCandless. I afraid, Mr. Chairman, we are straying here.

Mr. Wise. Can we get all this on a CD-ROM somewhere?

Ms. Gapen. Anyway, spring came to Stoughton, because the tap buckets were on all the telephone poles.

The fact is some people do not weed much, and they try to manage that information and collections, because research is often cyclical, and what you have today which was used heavily yesterday may not be being used today, may be coming back around next time, and Government information falls into that same category. Managing and making those choices are, to some extent, risky.

Mr. McCandless. I am sure that I have overused my time. Thank you, Mr. Chairman.

Mr. Wise. Mr. Schiff.

Mr. Schiff. Mr. Chairman, I have no questions. I have appreciated listening to the witnesses, and I have always wondered what librarians did back in the stacks all those hours, and now, I am glad I found out for the first time. I want to thank the witnesses.

Mr. Wise. Well, that is going to be left for another hearing, Mr. Schiff.

Mr. Schiff. I would add, however, Ms. Gapen, that although I represent a district in New Mexico, I was born and raised in Chicago, and we are very familiar with Wisconsin. That is where you go if you live in Chicago and you wanted to see a Chicago Bears home game televised.

Ms. Gapen. That is true.

Mr. Wise. I do have a question for Ms. Gapen and Mr. Mercury. It seemed to me that you all might approach this, from a policy standpoint, a little differently. Ms. Gapen seemed to be suggesting that, at this point, it would not be a good idea to have a single agency setting standards or setting a Government policy, and you were very—I think you were the one very careful to distinguish between policy and strategy. Mr. Mercury, you seemed to suggest that you thought that it would be a good idea to have standards of some sort as a central system, and I just wonder if you two might——

Mr. Mercury. Well, I think one thing I would like to make clear—I think it is probably unrealistic to set a national information policy, and I think what is evolving and the word that I like to latch onto is strategy rather than a national information policy. Let me make that clear. I do not think it is possible, but I think that in discussing it, thinking about it, it does not do any harm to look at policies from other countries. I think the key here is to look at some type of strategy. So, I do not think we are that far off track. It might be a matter of semantics.

Mr. Wise. Ms. Gapen.

Ms. Gapen. I think that is probably true. We have gotten so involved in the last couple of years with talking about information policy that when you look at the decisions that are being made today, apart from reviewing the legislation, so much of which is under review such as the notion of the investment of funds for equipment for access, today's decisions are really strategic. They are, however, supported by underlying policy. We may have more agreement on the actual policy than interpretation. The strategic questions are the ones which we should, I think, look to first and relate to policy. I think many of the things we have been talking about with GPO, and so forth, are strategic, and certainly, for us, the financial investment we are making is strategic.

Mr. Wise. Thank you very much.

Hal, you do you want to add something?

Mr. Shill. I just wanted to add something briefly, because I spoke in favor of policy, so I would like to get a last word in on that, too. I think policy is reflection of national purposes there, and I think—I disagree in nuance, though not totally, with my colleagues on the left here that we do really need to be looking at some national information policy questions right now. Two examples, in particular, come to mind:

I testified a couple of years ago at hearings on the Japanese Technical Literature Act, and we have defined a national need for getting Japanese technical information. I do not think a lot of people would disagree that there is a need for that. There are, potentially, multiple channels and multiple strategies to be used in getting it.

Second one—there are types of data that we do not have. Do we need these? Data on the homeless, right now, is one major domestic policy question on which I think we really could use some hard data. One which I mention in my testimony, too, was on marijuana growth and consumption, which we might like to know for control of illegal substances, and the reason that I brought that in was we got a question on that a little while ago from one of our patrons on how much marijuana was grown in West Virginia.

Mr. Wise. A lot, unfortunately.

Mr. Shill. A lot. We did not have the answer. We knew about the pot plane crash north of Charleston a few years ago, but that was the major example that we had, and we found—we checked with the National Organization for Reform of Marijuana Laws, which said that there is an $800 million cash crop in the State. That is another type of information that, perhaps, we have a national interest in knowing about. What is the production? What is the consumption? I am not sure they are going to give it readily to census polltakers, but I think there is a need for that information, and if we can get it from third parties who may not be viewed as Federal agents, potentially, there is the need for that. So, I do see a need for policy.

Ms. KRANICH. I might also add, though, that we also have a great need for standards, and standards can be viewed separately from policy. Unless we have standards in this data base development, we are never going to be able to really take advantage of the full potential of electronic technology in the Federal Government or in the private sector, as well. Users definitely benefit from standards, not only providers, in that, at some point, all of us are going to need to use these CD-ROM's. But if every single one is different—structured differently and the protocols for accessing it are different, there is no way any one human being is going to be able to learn how to use all these data bases.

Mr. WISE. Well, I want to thank this panel. You have come a long way. You have covered a lot of ground, taught me a few things, and we are going to title this panel with Hal Shill's latest introduction of subject matter. We are going to call it the sex and drugs panel.

Ms. GAPEN. That is Wisconsin and West Virginia.

Mr. WISE. Our winters are not as long, but we try to make up for it in other ways.

Thank you very much.

Our final panel will be Joseph Clark, Deputy Director of the National Technical Information Service, Department of Commerce, and Scott Armstrong, executive director of the National Security Archive, and I believe Mr. Armstrong is to be accompanied by Tom Blanton. Is that correct?

[Witnesses sworn.]

Mr. WISE. Mr. Clark, if you would like to start off. Your entire statement, of course, will be made a part of the record routinely and so you may summarize.

STATEMENT OF JOSEPH E. CLARK, DEPUTY DIRECTOR, NATIONAL TECHNICAL INFORMATION SERVICE, U.S. DEPARTMENT OF COMMERCE

Dr. CLARK. Thank you, Mr. Chairman, and members of the subcommittee, it's a pleasure to be here.

I'd like to briefly summarize my testimony. I do appreciate the opportunity to appear before you to tell you about the unique role of the National Technical Information Service [NTIS].

NTIS is the central source for acquisition and public sale of both domestic and foreign government funded research, development and engineering reports and associated business information.

Our base program promotes the development and application of science and technology and provides channels for the dissemination of specialized information to business, industry, academe, governments, and the public.

Our history goes back to 1945 with President Truman and so the Japanese Technical Literature Act is for us a bit of deja vu. Since

1950 the Commerce Department has in fact operated the clearinghouse which constitutes the core of the NTIS functions.

Last fall there was an act passed, Public Law 100–519, which established the Technology Administration and gave the National Technical Information Service a new lease on life and it's given us an opportunity to provide a greater focus on technology and competitiveness. It also provides for a stronger representation for industry in discussions of technology issues both here and abroad.

We're a relatively small organization of about 350 employees. The law requires that we be self-supporting and as a result we fund all of our operating expenses. That includes salaries, printing, postage, our office space, our warehouse, and all of our marketing and other expenses. We no longer get a penny from congressional appropriations.

Our collection includes materials from over 200 U.S. Government agencies with major collections from NASA, Defense, Energy, Commerce, Transportation, Health and Human Services, and the Environmental Protection Agency.

Last year more than 66,000 titles were added to our collection, and these titles are no longer just 100 pages or so technical reports, although that includes the bulk of the items that we collect. We now also have software, data bases on various kinds of both magnetic and optical media, patent applications, published searches, and a rich diversity of items.

Our archive, going back to about 1945, is approaching 2 million items and those are, as was discussed in the earlier panel, permanently available. They are never out of print and are intended always to be available.

I'll tell you a little bit about our special programs and as I do this, I'd appreciate some special note of how electronic technologies are creeping into the information that we supply.

We operate a mandated Center for the Utilization of Federal Technology [CUFT], which keeps U.S. industry aware of Government research and engineering efforts having special potential or that have come to a breakthrough stage.

One of the items of this program is the most active patent licensing program in the Federal Government. We are now licensing at a rate of greater than one per week, and the royalties that come from the commercial sales of the items, the products that result from these patents last year totaled about $5½ million. Most of that $5½ million in royalty revenue was returned to the research agencies.

As the central point for information on all the Government inventions, not just those that we license, we announce them in a number of NTIS publications, and they are also available for online searching. In fact, we will soon implement an electronic bulletin board for even faster announcement of all Federal patent operations, whether those are the ones that we will license or not.

On the international scene, of course, there's a lot of scientific and technical developments taking place abroad. We have agreements, in fact, in place in over 55 countries. A third of our input comes from abroad these days as more and more research is done outside the United States. The Japanese Technical Literature Act was mentioned. One of our functions under that act is to annually publish a Directory of Japanese Technical Resources in the United States. This directory provides information on commercial services, Government programs and libraries that collect, abstract, translate, or disseminate Japanese technical information in the United States.

The directory also includes a unique set of citations of Japanese technical documents that are translated at Government expense in the preceding year. With the focus on electronic information in this hearing, it occurs to me to mention that our counterpart agency in Japan, the Japan Information Center of Science and Technology, provides an online information service in the Japanese language in Japan. It's how Japanese scientists and engineers become aware of the work that not only the Japanese Government is funding, and Japanese industry is doing, but also that which is done around the world. We provide that same electronic access to any American scientist or engineer who is interested in the same results that Japanese scientists and engineers need.

Another one of our international activities is technology monitoring. We're a partner with the National Science Foundation and the State Department in Project STRIDE. The science counselors and other technical experts in our embassies abroad gather data on the latest scientific developments and they cable it electronically to the State Department here in Washington. It is then shared with NTIS and the National Science Foundation for our evaluation and further dissemination outside of the Government.

We have expanded the availability of the resulting material by circulating it weekly in our "Foreign Technology Newsletter" that goes particularly to small businesses all over the country. We find that big business needs for Japanese and other foreign information is largely met by their own offices abroad.

Our newest program in fact is quite nonelectronic. It is technology seminars. We found that with all this electronic information, a veritable flood of information that we all find in our in boxes, we need much more face to face communication in order to deal with the actual decisions on implementing technology. So we are in fact, through these seminars, accelerating the dissemination of domestic and foreign competitive information to American business and industry. These seminars are conducted in cooperation with selected Government agencies and they focus on selected, recently completed reports in high interest areas.

We arrange for speakers, facilities, and the other services and mount a seminar that will bring the report authors and the experts together with those in private industry who are most interested in the subject and for the purchasers of the reports, those seminars are conducted at no additional charge.

Our Federal Computer Products Center may be of particular interest. This Center offers computer products produced by the entire Government. It maintains a steady flow of new and updated computer software, data files, and various bibliographic data bases. Currently we have a collection of more than 1,700 software items and 1,300 data files and from more than 100 Federal agencies. I would like to mention two data bases in particular that are offered by the Center. Our own data base, the NTIS bibliographic data base, contains summaries of almost 1.4 million technical reports

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that we have collected and archived since 1964. Online access is provided through a number of private sector vendors, DIALOG, STN, and others.

We invest about $2½ million each year in the creation and maintenance of this widely-used data base. It is one of the top 10 data bases, in fact technical data bases, in the world in terms of connect hours searched.

The second data base is our Federal research in progress data base, a successor to the Smithsonian's science information exchange data base which came to its demise in the late 1970's. This is a collection of summaries of tens of thousands of U.S. Government funded research and engineering projects that are currently underway. There may be no reports out of these projects as of yet.

This data base provides a unique opportunity to identify existing research projects so ideas can be shared without waiting for the availability of technical reports or the journal literature. It also reduces duplication of research efforts within the Federal Government.

Switching to CD-ROM, we are particularly interested in the potential of this technology and in fact we've been involved with it with private sector partners for about 4 years. We are participating in SIGCAT, which was described in earlier testimony. The idea behind their FedROM project is that an agency with a useful data base that's too small to put on a separate compact disk could put the data base on one disk along with small data bases from other agencies. I noted in the citations that were projected on the screen here earlier during the demonstration that our private partner, which is a new startup firm in the University of Maryland's incubator program was the producer of the data base and software that were described—of the final bundle of the package, if you will.

We are also investigating the feasibility of offering CD-ROM production services to other agencies to make it easier for those agencies to provide access to their data. Also, the NTIS data base that I mentioned is available on CD-ROM through three private vendors.

You may be particularly interested in our experience over the past decade with the decline in the unit sales of our paper and microfiche products, the full text of these tens of thousands of reports that we collect annually. There is a gradual, slow decline in the demand for these reports, and we have done an extensive study of the cause for that decline.

The explosive growth in the number of information alternatives and continued user migration toward online services and other electronic products like CD-ROM, we believe have been the two major causes of that decline. Price also undoubtedly has been a factor, particularly as information budgets in libraries have failed to keep pace with the growing array of information offerings, but our price increases have been no greater and frankly no less than those of other information suppliers.

Paper and microfiche technical report sales generate about half of all of our revenues therefore the decline in unit sales for these products has forced us to raise prices in order to cover the cost of our operations and keep the ship afloat.

Over the past decade the price of the average paper technical report sold by NTIS has increased by approximately 180 percent.

This is about in line with the rest of the information industry where according to a recent survey conducted by the Library Journal, the price of the average scientific and technical journal has increased by approximately 200 percent over the last 10 years.

Electronic information products are replacing traditional formats, and we have developed a modernization plan to allow our products and services to keep pace with this change. We plan to standardize input formats, acquire equipment for electronic information management, develop full text optical storage and dissemination systems and use state-of-the-art technologies as they emerge.

In addition to emphasizing electronic dissemination we will increasingly seek joint ventures with the private sector for distributing the information products to the targeted audiences in business and industry as well as the general public.

NTIS will continue to modernize its procedures, systems, and equipment in order to provide the best possible access to this vital information which, when it is properly organized and rapidly accessible, is of the utmost importance in today's competitive environment.

Mr. Chairman, I appreciate the opportunity to appear before you and the subcommittee, and I would be pleased to answer any questions.

[The prepared statement of Dr. Clark follows:]

U.S. DEPARTMENT OF COMMERCE
PREPARED STATEMENT OF JOSEPH E. CLARK
DEPUTY DIRECTOR OF THE NATIONAL TECHNICAL INFORMATION SERVICE

Before the House Subcommittee on
Government Information, Justice, and Agriculture
Committee on Government Operations
May 23, 1989

Mr. Chairman and Members of the Subcommittee, I would like to thank you for inviting me to testify before you today. I will address the role of the National Technical Information Service in the dissemination of Government information and our current and future activities regarding electronic information products and services.

NTIS operates as the central source for the acquisition and public sale of domestic and foreign government-funded research, development, and engineering reports and associated business information. The Information Clearinghouse Program (NTIS' base program) directly promotes the development and application of science and technology and provides channels for the dissemination of specialized information to business, industry, academe, governments, and the public.

Our predecessor organizations go back to 1945 when President Truman established the Publications Board to make available Government research reports that had been withheld because of their security classification. In 1950, Public Law 81-776 directed the Department of Commerce to operate a national clearinghouse for government-funded scientific and technical information. Then in 1970, the Department of Commerce established the National Technical Information Service as a primary operating unit of the Department, to assist other Commerce operating units in the dissemination of business and statistical information as well as to continue disseminating scientific, technical, and engineering information.

Last Fall, NTIS became part of the new Technology Administration within the Department of Commerce. The Technology Administration was created by Public Law 100-519 to provide a greater focus on technology and competitiveness within the Department and to provide for more effective management of these responsibilities. It also provides for stronger representation for industry in discussions of technology issues both here and abroad.

NTIS is a relatively small organization of about 350 employees. The 1950 law provides that we be self-supporting. As a consequence, we fund all of our operating expenses, including salaries, printing, postage, and space, through the sale of products and services--not through appropriations.

The NTIS collection includes material from over 200 agencies, with major collections from the National Aeronautics and Space Administration (NASA), the Departments of Defense, Energy, Commerce, Transportation, Health and Human Services, and the Environmental Protection Agency. In 1988, more than 66,000 titles (technical reports, software, databases, patent applications, published searches, and other items) were added to the collection. Nearly two million different technical publications are now available, none of which is ever "out of print" at NTIS.

We operate the Center for the Utilization of Federal Technology (CUFT) which keeps U.S. industry aware of Government R&D and engineering efforts having special potential or being at a breakthrough stage. CUFT conducts the most active patent licensing program in the Federal Government, handling the activity for those agencies that want us to negotiate for them. In FY 1988, we issued 66 licenses, approximately 65% of which were issued as exclusive. Also in FY 1988, royalties exceeded those of the previous year, totaling $5.6 million, nearly $4 million over program costs. Most of these revenues are returned to the R&D agencies.

Furthermore, NTIS is the central point for information on all government inventions which are available for licensing. These inventions are announced in a number of NTIS publications and are available for online searching as well. We will soon implement an electronic bulletin board for even faster announcement of federal patent applications.

CUFT also maintains a strong foreign patenting program, handling the filings by using contract attorneys. Patents are filed primarily in Canada, Japan, and the industrialized countries of Western Europe. CUFT's foreign patents now provide protection against foreign competition for about $80 million in export sales by U.S. licensees. Without this effort, foreign companies could use the U.S. Government technology covered in these patents without any direct benefit to the U.S.

Conversely, it is evident that scientific and technical developments of high interest to the U.S. community are taking place overseas. We have agreements with over 160 organizations in 55 countries. Input from these foreign cooperating organizations and foreign material collected through our sister federal agencies (notably, DoE, DoD, and NASA) now exceeds 30% of our total annual input. Based on our four decades of experience in collecting Japanese technical information, NTIS has focused recently on the requirements of the Japanese Technical Literature Act. We support the policy activities of the Commerce Department's Japanese Technical Literature Program by publishing special reports that summarize the current status of Japanese research and development in key high technology fields. In addition, we publish an annual Directory of Japanese Technical Resources in the United States. This Directory provides information on commercial services, government programs, and libraries that collect, abstract, translate, or disseminate Japanese technical information. The Directory also includes citations of Japanese technical documents translated at government expense in the preceding year.

Another international activity is technology monitoring. NTIS is a partner with the National Science Foundation (NSF) and the Department of State in Project STRIDE which responds to Executive Order 12591. The science counselors and other technical experts in U.S. embassies gather data on the latest scientific developments, and they cable it to the State Department where it is shared with NTIS and NSF for evaluation and dissemination. NTIS has expanded the availability of the resulting material by including much of it in our revamped "Foreign Technology Newsletter," distributed weekly to subscribers. The STRIDE effort suggests that the foreign service S&T reporting function needs to be strengthened. Unlike other industrialized countries, the U.S. has had no coordinated and effective method for collecting, evaluating, and distributing information about these developments.

The newest program at NTIS is our Technology Seminar Program. It was created to accelerate the dissemination of domestic and foreign competitive information to the private sector. Seminars are conducted in cooperation with selected Government agencies as part of the Technology Administration's efforts to increase competitiveness of U.S. firms. The seminars focus on selected, recently completed reports in high interest areas which are printed and marketed to a carefully researched audience. We then arrange for the most appropriate speakers, facilities, and other services necessary to mount a seminar which will bring the report authors and other experts together with those in private industry who are most interested in the subject. The seminars are conducted at no additional charge to purchasers of the reports.

The NTIS Federal Computer Products Center offers computer products produced by the U.S. Government. Using extensive contacts within various federal agencies, this Center maintains a steady flow of a variety of products, including new and updated computer software, data files, and bibliographic databases. Currently, we have a collection of more than 1,700 software items and 1,300 data files from more than 100 federal agencies including the National Energy Software Center, the Environmental Protection Agency, and the National Institute of Standards and Technology. I would like to mention two databases in particular which are offered by the Center. The first is our own NTIS Bibliographic Database containing summaries of all 1.4 million technical reports we have announced since 1964. Online access is provided through a number of private sector vendors. We invest $2.5 million each year in the creation of this widely used Database. The second database is our Federal Research in Progress (FEDRIP) Database, a collection of summaries of U.S. Government funded research and engineering projects currently underway. FEDRIP provides a unique opportunity to identify existing projects so that ideas can be shared without waiting for the availability of technical reports or the journal literature. FEDRIP also reduces duplication of effort within the Government.

As for electronic dissemination, NTIS is particularly interested in the potential of CD-ROM technology. We are participating in the FedROM Project of SIGCAT, the Special Interest Group on CD-ROM Applications and Technology. The idea behind FedROM is that an agency with a useful database that is too small to put on a separate compact disk, could put the database on a disk along with small databases from other agencies. In addition, NTIS has a new joint venture with a private firm to increase access to several databases via CD-ROM. We are also investigating the feasibility of offering CD-ROM production services to other agencies--through private sources--to make it easier for the agencies to provide access to their data. Also, the NTIS Database mentioned earlier is available on CD-ROM through three private vendors.

The past decade has seen a decline in unit sales of paper and microfiche products sold by NTIS and most other information suppliers. Explosive growth in the number of information alternatives and continued user migration toward online services have been the two major causes of this decline. Price has also undoubtedly been a factor, particularly as information budgets have failed to keep pace with the growing array of information offerings. However, NTIS price increases have been no greater than those of other information suppliers. Paper and microfiche technical report sales generate about 50% of all NTIS revenues. Thus, the decline in unit sales for these products has forced us to raise prices in order to cover our cost of operations. Over the past decade, the price of the average paper technical report sold by NTIS has increased by approximately 180%. This is about in line with the rest of the information industry where, according to a recent survey conducted by the *Library Journal*, the price of the average scientific/technical journal has increased by approximately 200% over the last ten years.

Electronic information products are replacing traditional formats and NTIS has developed a modernization plan to allow our products and services to keep pace with this change. We plan to standardize input formats, acquire equipment for electronic information management, develop full-text optical storage and dissemination systems, and use state-of-the art technologies as they emerge. In addition to emphasizing electronic dissemination, NTIS will increasingly seek joint ventures with the private sector for distributing scientific and technical information products to targeted audiences in business and industry as well as the general public.

The enactment of P.L. 100-519 last year placed NTIS in a stronger position to serve the technical information needs of Government, business, industry, universities, and the general public. NTIS will continue to modernize its procedures, systems, and equipment in order to provide the best possible access to this vital information, which when properly organized and rapidly accessible, is of the utmost importance in today's competitive environment.

I appreciate the opportunity to appear before the Subcommittee, Mr. Chairman. I would be glad to answer any questions you may have.

Mr. WISE. Mr. Armstrong.

STATEMENT OF SCOTT ARMSTRONG, EXECUTIVE DIRECTOR, NATIONAL SECURITY ARCHIVE, ACCOMPANIED BY TOM BLANTON, DEPUTY DIRECTOR

Mr. ARMSTRONG. Thank you, Mr. Chairman, Mr. Schiff.

I want to thank you for inviting us today to talk to the subcommittee. As you mentioned, I am Scott Armstrong, the founder and executive director of the National Security Archive. Accompanying me today is Tom Blanton, deputy director of the archive, who has particular responsibility within our organization for monitoring Federal information policies.

We are very appreciative of this opportunity to address these questions. We are a primary library user of the Freedom of Information Act for the past 3½ years, and we have worked collegially with many of the other organizations, FOIA requesters, litigators, and the dedicated access professionals of the Federal Government who service the Freedom of Information Act.

We have also been familiar through our own application of computers and other technologies with the access that is now available to previously unavailable Government documents on national security and foreign policy.

In the interest of brevity, I am going to leave my formal written statement and ask that it be submitted for the record, although I would like to note that the National Security Archive is a success that exists today because of a failure of Federal information policies. Three and a half years ago, a vital national resource, information collected and analyzed at taxpayer expense and released under the Freedom of Information Act, was alternatively being hoarded and squandered.

Agencies seemingly went out of their way to make important materials inaccessible to even the most experienced information users, such as journalists, scholars, former officials, and public interest experts, essentially the coalition that we represent in our organization. Delays in processing, the storing of information, inaccessible spots, all of this made information less and less accessible to everyday users.

There are three specific cases that we have encountered at the archive that I would like to put my emphasis on today and then move to six basic recommendations of the subcommittee's consideration. As a routine practice at the National Security Archive, when we begin work on any given topic an archive staff member will file a Freedom of Information Act request for the electronic data bases or other information, lists of previously released and unclassified and unpublished materials that might be relevant to the subject.

With such lists and indexes it is then possible for us to make a narrow Freedom of Information Act request to avoid redundancies, to make the maximum use of previously released Government agency information to pick specific documents with the greatest public interest, and to reduce the burden on those agencies.

The reactions of two archive requests such as that, one with the Department of Energy and the other with the Central Intelligence Agency, I think are quite illustrative. The Department of Energy, after an initial negative response, ultimately directed its component offices that the reprogramming or manipulation of an existing data base to respond to a Freedom of Information Act request was essentially nothing more than the electronic equivalent of a manual file search.

While they clearly had other concerns in mind and recognize that there are limits to what they can do with data bases at taxpayer expense, the message was clear. The FOIA applies to computer records, and agencies should appreciate the efficiencies made possible by electronic searching.

In contrast, the Central Intelligence Agency not only attempted an initial stonewall to a Freedom of Information Act request for an index of requested documents but ultimately produced those documents in the least usable form. When we filed our request, we found that the only form the Central Intelligence Agency had this information in was electronic. We said that's fine, we will take it electronically.

They were unwilling to provide it and we had to go to court, and they ultimately provided it but they provided it in what you have before you on your right side: a random data dump of 5,000 pages of the contents of that data base. So instead of our being able today to use key word searches, search by request or search by topics, search by virtually any criteria that you could choose on an electronic data base, we have what amounts to the equivalent of providing a library card catalog ordered by the date which the book was received rather than something that is truly useful to a user.

Unfortunately, in both the district and appellate court we essentially received the response in those domains that you have won, you have gotten the information you asked for, it's time to go away.

Similarly, we have had problems with the White House and the National Security Council on the question of electronic mail system. At the end of the last administration in the closing days of January, we recognized that there was some concern about what would happen with the so-called PROFS system, electronic mail system that IBM provided to the White House that became more familiar to the American public in the course of the Iran Contra hearings because it was the source of much of the information that was used that Oliver North and others transmitted their information on.

We went to the National Archives and Records Administration and asked what their plan was to deal with the PROFS system at the end of the Reagan administration, and they indicated that as far as they were concerned, this did not rise to the level of a record, that this information was up to the President and the White House to determine how they would deal with it. We learned shortly thereafter that it was this information, that they intended to delete this information on the eve of the inauguration.

We went into Federal district court along with the ACLU Public Citizen, the American Library Association, the American Historical Association, and the Center for National Security Studies and a variety of other plaintiffs, including former Senator Gaylord Nelson, in essence to preserve these materials.

On the eve of the inauguration, the Acting Deputy Attorney General, John Bolton, showed up to argue the case himself, and he likened this instance of the necessity of destroying this electronic information to a tenant moving out of the house who, if he were required to leave his furniture in the doorways and windows, that would happen if the court were to grant a temporary restraining order, thus preventing the new tenant from moving in.

Judge Barrington Parker, experienced in such matters as landlord/tenant things, considered this for a moment and said: Well, Mr. Bolton, that may be all well and good, but it is unusual when the tenant who is departing wants to burn all the furniture on the front lawn, and proceeded to grant our temporary restraining order, although we still battle in this case on through today, still unsure whether the National Archives or the current administration will see to it that these records are maintained.

We will be happy to report back on the progress of that case. As was noted in an earlier panel, these cases take some time, and that one has already taken us 4 or 5 months. We expect it may take several more years, as similar cases have in the past.

The lessons of these three cases are clear to us. First of all, we need to affirm that the Freedom of Information Act applies to Federal information in whatever form rather than describing the statute as obsolete. We are encouraged by a number of cases, but most particularly I would call your attention to the Ninth Circuit Court of Appeals case, *Long* v. *Internal Revenue Service*, which was written by then Judge Anthony Kennedy, now Supreme Court Justice Kennedy, which made it clear that the information in whatever form is available under the Freedom of Information Act.

The danger of treating the current statute as if it does not apply to electronic information or is otherwise obsolete is that it will assure that some Federal agencies will make the "obsolete" analysis a self-fulfilling prophecy.

Second, as in most areas of the Freedom of Information Act, the key problem for electronic access is not with the statutes or the case law but with agency practices. The road to bureaucratic hell is paved with good congressional intentions.

Essentially, we have seen since the 1986 attempt to loosen the few requirements under the Freedom of Information Act, accommodation of Office of Management and Budget definitions, Department of Justice guidances and agency regulations that have sought to thwart the intentions of that act. Likewise, agencies have developed multiple rationales for denying destroying electronic information, and unfortunately, as we mentioned, the courts occasionally hold them up.

Unless there is a stringent congressional oversight pressuring agencies to comply with the intent of the Freedom of Information Act on electronic information as in other areas, access will inevitably lose out to the permanent bureaucratic tendency to avoid embarrassment.

Third, we see the same barriers to access—destruction, controls and fees—that apply to paper records under the FOIA apply to electronic information, only more so. As the PROFS case shows, the destruction of records in an electronic environment is even easier than before. A single keystroke does what a night or two nights of shredding or carrying out burn bags would otherwise do.

The National Archives and Record Administration, always reluctant to challenge other executive agencies, will have to toughen its approach to monitoring agency recordkeeping and disposition if practices are to be changed.

We encourage Congress to strengthen NARA's watchdog abilities and to encourage NARA's use of those abilities to actively monitor agency practices.

The development of electronic data bases has become another excuse for increasing classification and other controls on Federal information. The sensitive and unclassified information categories are but one problem that we can anticipate as we approach technical data bases.

We are particularly concerned, though, that there is a possibility with electronic records of finding some solutions to the classification problem, of beginning to generate automatic sequences of derivative declassifications so that classification can be tracked across classified documents, so that, in fact, once something is declassified, it will be declassified Governmentwide. So we take some encouragement here. We again believe that Congress must play the crucial role in managing this area.

Electronic information poses new problems in terms of fees to be charged for access or copying, which has already become the most contentious barrier to access paper records. According to the State Department's 1988 annual report, this effort in the State Department alone involved many tens or possibly hundreds of thousands of dollars in order to collect $8,131 worth of fees.

The enormous value added inherent in the electronic information collection also raises the stakes in the pitched battle between private industry and public interest advocates over Government dissemination of information. One person's access is another person's dissemination. We are concerned that we should consolidate the access principles on which we can all agree to include the fewest possible barriers.

Next I would list the record and nonrecord distinction and the blurring that has occurred in Freedom of Information Act case law as a directly derivative problem in the case of electronic information. When applied to relational data bases which link disparate terms through nonlinear pathways, the record, nonrecord distinction loses its precision.

We are concerned that OTA's report recommendation that the FOIA is an access to information statute rather than an access to record statute be reaffirmed here.

Next we are concerned that the commitment to the principles embodied in the Freedom of Information Act need to be restated and enforced by rigorous, effective, and, most importantly, regular congressional oversight. The current hearings by this subcommittee as well as the hearings and interrogatories by Senator Leahy's subcommittee in the other House are welcome developments in this regard.

The committee's recent oversight of the State Department and the report received from the General Accounting Office we consider an important development in precisely this type of oversight.

Ultimately there may be a need for explicit statutory language that will clarify and codify Congress' commitment to these principles in an overall expansion of access rights. Electronic issues will be the leading edge of the new consideration. But unless we deal with the problems that have plagued paper records, the electronic language will fall prey to the same vicissitudes as previous access statutes.

I commend you, Mr. Chairman, and the members and staff of this subcommittee for beginning the process of addressing the new issues raised by electronic information. We at the National Security Archive, as we attempt to open the doors of electronic access to Federal information, look forward to working with you and reporting back on our attempts to open more access to more information for a more truly democratic society.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Armstrong follows:]

THE NATIONAL SECURITY ARCHIVE

1755 MASSACHUSETTS AVENUE N.W. SUITE 500 WASHINGTON D.C. 20036 202/797-0882

TESTIMONY OF

SCOTT ARMSTRONG, EXECUTIVE DIRECTOR

AND

THOMAS S. BLANTON, DEPUTY DIRECTOR

THE NATIONAL SECURITY ARCHIVE

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT INFORMATION,

JUSTICE AND AGRICULTURE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

U.S. HOUSE OF REPRESENTATIVES

MAY 23, 1989

Mr. Chairman and Members of the Subcommittee,

I want to thank you for inviting this testimony from the National Security Archive on our recommendations for federal government policies on public access to electronic information. I am Scott Armstrong, founder and Executive Director of the Archive, and accompanying me today is Tom Blanton, Deputy Director of the Archive, who has particular responsibility in our organization for monitoring federal information policies. We very much appreciate the opportunity to brief you and the Subcommittee on our extensive experience with the Freedom of Information Act, our collegial work on these issues with many hundreds of other FOIA requesters and litigators, as well as with the many dedicated access professionals in federal agencies who process those requests, and our own application of computers and other new technologies to enhance access to previously unavailable government documents on national security and foreign policy.

Background on The National Security Archive

The National Security Archive is a successthat today because of a failure of federal information policies. Three and a half years ago, a vital national resource -- information collected and analyzed at taxpayer expense,-- was alternately being hoarded and squandered. Agencies seemingly went out of their way to make important materials inaccessible to even the most experienced information users, such as journalists, scholars, former officials and public interest experts.

Delays in processing requests often resulted in the requester losing interest and failing to followup, having finished the article or book or piece of research for which the information was requested. In the rare -- but significant -- instances in which information was successfully requested and released, agencies rarely kept copies of the released documents for public reference, and certainly never provided catalogs or indexes of released materials to assist research or future requests under the FOIA. The results of even the most successful requests, once the research was done, often were consigned to basements or off-site storage, inaccessible to anyone else.

In 1985, a small group of journalists and researchers decided to begin to take on this problem of no institutional memory or followup on FOIA documentation, by pooling their Central America-related documents obtained through the FOIA. With the help of Congressman Jim Moody, a former academic himself, we founded the Central America Papers Project and started the labor-intensive effort to use computers to catalog all the released documents. Very quickly, through conversations with major philanthropies like the Ford Foundation and with our colleagues in the library community, we discovered the need not just for creating access to documents on Central America, but for as many foreign policy topics as the available resources would allow. Thus was born the National Security Archive, a non-profit tax-exempt research institute and library of declassified and unclassified government documents.

Now we occupy an entire floor of the Brookings Institution Annex, with 40 professionals on staff. We are guided by a distinguished Advisory Board of academics, journalists and former officials, headed by John Shattuck, a vice president of Harvard University. Foundations provide a $1.5 million per year budget, including a major publications program to ensure the widest possible dissemination of the unique and previously inaccessible materials in the Archive's collections to more than 200 research libraries throughout the country and around the world

Each of the Archive's documentation projects benefits from the advice and help of a review panel comprised of experts in the field, whether that field is the Cuban Missile Crisis or the Philippines or nuclear non-proliferation. Archive staff collect previously released materials (not just from the FOIA, but from court records, Congressional hearings, private collections, and many other sources), file systematic FOIA requests to fill in the gaps in the record, and build detailed reference tools such as chronologies of events and glossaries of names and organizations. Then, by computerized cataloging and indexing of the documents, we create true access to what otherwise would amount to jumbled reams of unconnected paper.

Our internal computer system utilizes a mini-mainframe linking 30 workstations in a massive shared database with controlled vocabulary, standardized terms, and extraordinary search capabilities. We currently have more than 40,000 records cataloged and are adding records to the database at a rate of about 2,500 per month. We organize and index the documents into topical collections such as "U.S. Policy Toward El Salvador" or "The Iran-Contra Affair," and publish a two-volume computer-generated index and catalog for each collection keyed to a complete set of the documents organized and preserved on archival quality microfiche -- for subscription by university and research libraries across the country.

Over the past three and a half years, Archive staff have filed more than 2,000 FOIA requests with some 150 offices and components of more than 30 departments and agencies of the federal government. We have won and lost FOIA requests for electronic information -- described in detail below -- and currently are engaged in several pieces of litigation under the FOIA. In addition to our FOIA experience, we have also conducted experiments using the latest scanning technology to create bit-mapped images of documents and convert them to machine-readable text. Although quality and accuracy problems still preclude complete reliance on scanning/imaging technology, this space-efficient and user-friendly technology -- coupled with the promise that the government will store so much of its information in electronic form -- promises enormous dividends for future document processing.

We are also planning to produce Compact Disk - Read Only Memory (CD-ROM) versions of one or more of our collections within the next year. Imagine, if you will, thousands of actual images of declassified documents stored along with all the associated indexes and finding aids on a practically permanent disk that would fit in your shirt pocket, up to 600 megabytes of memory on one disk, the equivalent of 1500 floppy disks. That is but one example of the potential of the new technologies; but as we know from our experience at the Archive, in solving a single problem, technology often creates two new ones.

As a routine practice in the early stages of document collection on any given topic, Archive staff file FOIA requests with relevant government agencies for the lists or indexes of previously released or unclassified but unpublished documents on the subject. With such lists and indexes it is then possible to narrow subsequent FOIA requests to avoid redundancies, make the maximum use of previous government energy spent answering requests, pick specific documents of greatest public interest, and reduce the burden on the agencies (thus getting the material more quickly). Reactions to two such Archive requests, at the Department of Energy and the Central Intelligence Agency, respectively, illustrate the poles of the debate within federal agencies over public access to electronic information.

A Victory for Electronic Access: The Department of Energy Case

In the case of the Department of Energy, the Archive's interest was particularly sparked by the existence of an unusual group of records -- unclassified but designated as "limited access" documents available only to specific groups or agencies but not to the general public. n the context of several years' of public debate over various governmental proposals for a new category of "sensitive but unclassified" information, Archive staff and colleagues in the library community were interested in actual agency practices in this area. After an August 4, 1987 notice by DoE's Office of Scientific and Technical Information (OSTI) to various agencies about these "limited access" reports, the Archive filed a multi-part FOIA request with OSTI for lists of the reports and for materials related to the practice of "limited access." OSTI's response consisted of three orders related to the program, and a denial of the list on the basis that none existed and that the FOIA did not require agencies to create new records.

The Archive's special counsel, retired Justice Department lawyer Quinlan J. Shea Jr., appealed this response, arguing that a list of the "limited access" reports must exist, else OSTI could not retrieve them for those groups authorized to receive them. Upon investigation by DoE's Office of Hearings and Appeals, it became clear that the list existed only on a computerized database which produced customized lists based on a "profile" of the authorized recipient. The Appeals Office granted the Archive's request with some far-reaching language: "...[T]he mere retrieval of information already existing in a database, even if a computer must be programmed to select specified types of data, does not constitute creation of a new record. Rather, it is more in the nature of selecting from a paper document information which is within the scope of a request and deleting information that is unwanted or exempt." (Decision and Order, Office of Hearings and Appeals, U.S. Department of Energy, Case No. KFA-0146, December 18, 1987)

Needless to say, OSTI was not happy with the Appeals Office decision and sought reconsideration and reversal. But the final decision, if anything, contained even stronger language supporting access to electronic information even when such access required reprogramming. The Appeals Office used the comparison of computer searches to manual searches of file cabinets: The former "merely uses different tools -- the computer and its software -- to conduct the search" but is not "significantly different....If the FOIA required anything less it would allow agencies to conceal information from public scrutiny by placing it in computerized form. This would be inconsistent with the FOIA's policy of the fullest possible disclosure." The Appeals Office did rule out data manipulation, calculations or record restructuring on the basis that they amounted to the creation of new records, but judged the most difficult issue to be "the extent to which agencies must search a database" to respond to a FOIA request. The Appeals Office said it would deal with the issue on a case-by-case basis, depending "upon the circumstances presented, including how the database is structured, the capabilities of the agency's computer system and personnel, and the specific information requested." (Decision and Order, Office of Hearings and Appeals, U.S. Department of Energy, Case No. KFA-0158, May 26, 1988)

A Loss for Electronic Access: The CIA Index Case

Exactly the opposite approach was taken by the CIA in response to a similar Archive request for the Agency's "list/index" of previously released documents. The enormous value of such an index to researchers is obvious, both in facilitating the broader dissemination of the released documents and in avoiding redundant

FOIA requests. Yet the CIA at first stonewalled the request, and only after litigation was filed, made available the least usable form of the list/index: a "random data dump" printout.

The Archive's original FOIA request to the CIA was filed on September 22, 1987. On October 29, 1987, the CIA replied with a "no records" response, acknowledging the existence of the index but citing CIA regulations that defined "record" to exclude indexes, and asserting that release of the index of previously declassified CIA documents "may" somehow reveal intelligence methods by virtue of "indexing practices and format unique to the CIA." Since under CIA regulations, a "no records" response is not appealable, the Archive filed suit against the CIA on January 20, 1988.

The CIA neither answered the complaint nor pursued its response arguments in court, apparently realizing its regulations would not be upheld. Instead, the Agency informed the Archive that the requested index existed only on computer and offered a printout of that database, not the electronic database itself. Archive staff met with CIA representatives on February 19, 1988, at which point the CIA handed over a 5,000 page paper printout described as a "random ordered data dump," specially produced as a result of the Archive's lawsuit.

Close examination revealed that the printout merely listed records in the order they had been released, not by subject or by document date, although extensive cataloging information was included on each document. The CIA's reponse was essentially equivalent to responding to a request for a library's card catalogue by providing a list of the books in the order that the library received them. No one would seriously contend that such a list is the library's card catalogue, nor was this "random data dump" the CIA's index. The Archive declined to accept the CIA's settlement offer, and pressed the Agency for the electronic index database in stripped-down ASCII text, minus software or any other programming.

The CIA refused this request and moved to dismiss the lawsuit on grounds that it had fully responded to the FOIA request with the printout, and therefore the case was moot. Unfortunately, Judge Stanley Harris granted the CIA's motion in a very brief order on July 26, 1988, stating that "the information is in a reasonably accessible form. Nothing precludes plaintiff from creating its own electronic database from the released information."

Our mistake probably lay in not hauling the CIA's printout into the courtroom for Judge Harris to peruse for himself. Although several brave researchers have put in the week or more necessary to make it through the complete printout (now bound into twelve 4-inch-thick volumes), the most common experience is to skim one or two volumes for relevant documents and then give up. As a small non-profit library, we don't have the resources it would take to key-punch the whole printout into a database. However, library colleagues at Apple Computer are currently experimenting with a scanning process that may yet turn the printout back into the database it once was.

The Problem of Electronic Mail and the Destruction of Electronic Information: The PROFS Case

The recent report by the Office of Technology Assessment on "Federal Information Dissemination in an Electronic Age" (October 1988) defined the question posed by electronic mail for FOIA purposes as "whether messages should be treated like agency records or like confidential personal communications such as telephone calls." (p.234) Unfortunately, the officials in charge of the most prominent electronic mail system in the U.S. government -- that at the White House and National Security Council -- chose neither of these two options, and instead, simply defined the information on the system out of existence. Were it not for the intervention of the National Security Archive and its co-plaintiffs, there would be no record left of the White House and NSC electronic mail system from the last years of the Reagan Administration.

The Archive now enjoys the distinction of having brought the last successful lawsuit against President Reagan and the first successful lawsuit against President Bush. On January 19, 1989, we won a temporary restraining order from Judge Barrington Parker of the D.C. Federal District Court, preventing Reagan, Bush, the White House, the National Security Council, and the National Archives and Records Administration from proceeding with the planned destruction of the internal memory and computer back-up tapes for the so-called "PROFS" system, the IBM electronic mail system at the White House and NSC.

You will remember that PROFS notes played a crucial role in the reconstruction of the Iran-contra scandal, as the Tower Commission and the Congressional investigators were able to recreate from backup tapes various extraordinarily detailed memoranda and notes that Oliver North and John Poindexter thought they had destroyed. Nevertheless, the National Archives and Records Administration (NARA) acquiesced in the White House decision not to routinely preserve the PROFS system tapes for the Reagan Presidential Library or as "agency records" at NARA.

We found out about the impending destruction in mid-January when one of our researchers working at the National Archives checked on the progress of turning Reagan Administration records over to NARA, and was informed that the White House and NARA considered the PROFS to be nothing more than telephone slips or buckslips. This reminded us of the NSC response when Congress first asked for documents on Oliver North's activities with the contras: According to internal NSC memos, they did not search North's office files for relevant documents because those were "personal" or "convenience" files, not official files. We quickly scheduled a meeting with the head of NARA' Presidential Records branch on Wednesday, January 18, but we could get no assurance that the PROFS tapes would be saved. In fact, we learned that the PROFS memory and tapes were scheduled for total deletion on January 19 and 20.

On January 19, with the American Civil Liberties Union as our pro bono counsel, we filed FOIA requests (to ensure standing to sue) and court papers asking for an injunction. We also brought in the co-author of the Presidential Records Act of 1978, former Senator Gaylord Nelson, along with the Center for National Security Studies and individual researchers, as co-plaintiffs. U.S. District Judge Barrington Parker heard the case in the afternoon, with Acting Deputy Attorney General John Bolton appearing himself to argue for the government. Bolton told Judge Parker that if he granted the temporary restraining order we sought, he could not assure the Court that the new President of the United States could be innaugurated the next day. Bolton told the judge the effect of our lawsuit on the White House and NSC computer system would be the same as a vacating tenant stacking up all the furniture in the halls and doorways so the next tenant could not get in.

Considering this statement with apparent humor, Judge Parker indicated he was puzzled that a departing tenant would seek instead to stack up the furniture on the lawn and burn it. At 6:10 p.m. on the day before the inauguration of George Bush, Judge Parker issued the TRO and stopped the PROFS destruction.

Within three hours, the NSC's general counsel, Nicholas Rostow, called us at our respective homes to plead for an understanding on the case. Rostow included several White House computer technicians and a Justice Department lawyer (apparently standing at a pay phone at an Inaugural Ball) on the conference call, and said, among other things, that our TRO had effectively frozen the whole PROFS system: No one was able even to type a single keystroke on the system because each keystroke over-wrote some previous keystroke protected by the TRO. As a result, incoming cable traffic including messages of congratulations from heads of state had to be referred to offices for responses with handwritten and typewritten notations.

With that leverage, we won an agreement from them that night (later stipulated in court) that they would make a complete backup of the PROFS system, including not just the "live" files but a bit-by-bit dump of the whole system including the deleted files. In return, we agreed to let them proceed with normal operations of the PROFS system.

Even today, we are still fighting for a court ruling that would force them to preserve the PROFS backup tapes permanently. In response, the government's pleadings argue that the PROFS information does not "rise to the level of a record" -- conveniently ignoring more than a hundred substantive PROFS notes we have entered into the record from the Oliver North trial and other Iran-contra proceedings. In fact, the White House denial of our FOIA request for the PROFS tapes said explicitly, "the data generated on the PROFS system does not constitute 'agency records' under the FOIA. Agency record material within the Office of Administration is kept in hard copy format." (April 6, 1989)

According to our sources at the National Archives, a significant proportion of the staff there is cheering for us. Staff in charge of preserving electronic records apparently were not consulted before the Presidential Records branch agreed to the PROFS destruction. Presidential Records took the position that the White House and NSC staff had the responsibility to print out any "significant" documents, and only those paper copies constituted records. Others at the National

Archives believe, as we do, that this ignores the realities of bureaucratic operations in the electronic age.

Winning the TRO amounts to an assessment by Judge Parker that we have a significant chance to prevail on the merits of the case. Such a decision will establish a precedent government-wide that "electronic mail" should be treated just as it would be as paper mail, as records when it discusses the business of the govenrment, a candidate for both for preservation and for public access under the Freedom of Information Act. The challenge of preserving and processing e-mail will be enormous: Just as of a 1986 OTA survey, 97 of 134 Federal agencies and agency components responding reported the use of electronic mail, and such use has only increased since then. Yet, these same statistics indicate that more and more substantive government business is taking place through the electronic mails, and we duck the challenge at the peril of losing our own history.

Joining the ACLU as pro bono co-counsel on the case is the Public Citizen Litigation Group, which has successfully argued previous FOIA cases against the NSC. Joining the National Security Archive as co-plaintiffs in the case are the American Historical Association and the American Library Association. We do not expect to get the majority of the enormous amount of electronic data contained on the PROFS tapes released to the public anytime soon. But we do expect to push the National Archives to do its duty and plan ways and means to preserve and protect records that exist in electronic form. And we do expect to force the White House and National Security Council to stop their practice of defining records as "personal" or "working files" -- not "rising to the level of records" -- which leaves control of the information in official hands and robs us of our public history. As technology advances, we will develop better and better ways to search electronic information and make it publicly available. We just have to make sure the information still exists when we finally solve the access problems.

Recommendations to the Subcommittee

I. **We need to affirm that the Freedom of Information Act applies to federal information in whatever form,** instead of describing the statute as "obsolete." Federal records statutes in general and the relevant caselaw in particular are actually quite good on this principle. The Ninth Circuit Court of Appeals (Long v. IRS, 1979), the D.C. Circuit Court of Appeals (Yeager v, DEA, 1982), and the Supreme Court (Forsham v. Harris, 1980) have all held that the FOIA applies to computerized information. The danger of treating the current statute as if it does not apply to electronic information or is otherwise obsolete, is that this will assure that some federal agencies will make the "obsolete" analysis a self-fulfilling prophecy.

II. **As in most areas of the FOIA, the key problem for electronic access is not with the statutes or the caselaw, but with agency practices.** The road to bureaucratic hell is paved with good Congressional intentions. One need only examine the practical effects of Congress's 1986 attempt to loosen fee requirements under the FOIA, which was thwarted by a combination of Office of Management and Budget definitions, Department of Justice guidance, and agency regulations. Likewise, agencies have developed multiple rationales for denying or destroying electronic information, and have been upheld on occasion by courts deferring to the agencies' presumed expertise. Organizations like ours are battling for greater public access and have won a few good decisions as well. But unless there is stringent Congressional oversight pressuring the agencies to comply with the intent of the FOIA on electronic information as in other areas, access will inevitably lose out to the permanent bureaucratic tendency to avoid embarrassment.

III. The same barriers to access -- destruction, controls, and fees -- that apply to paper records under the FOIA apply to electronic information, only more so. Any initiative that seeks to address the new electronic challenges will have to begin by solving the old problems:

(1) As the PROFS case shows, the **destruction of records** in an electronic environment is even easier than before, performed with a single keystroke as opposed to a shredder or a burnbag. The National Archives and Records Administration, always reluctant to challenge other executive agencies, will have to toughen its approach to monitoring agency record-keeping and disposition. Too often heretofore, NARA's stance has occupied only the spectrum between benign neglect and innocent bystander. Congress has a major role to play in strengthening NARA's watchdog abilities and in encouraging NARA's use of those abilities to actively monitor agency practices.

(2) The development of electronic databases has become yet another excuse for **increasing classification and other controls** on federal information. Ludicrous notions such as "sensitive but unclassified" information seem less reprehensible when applied in the context of massive technical databases, yet such is the slippery slope leading away from the free flow of ideas. Electronic information actually has promise in the other direction, for instance, in regards to classification. Through linkages with the original sources, electronic records could result in automatic sequences of derivative declassifications: Once the original bit of information was deemed releasable, all subsequent or derived bits could be released in an electronic chain. Congress must enter the fray and encourage the research and practices that will simultaneously afford national security information the

protection it deserves and yet facilitate timely citizen access to this most important of government operations.

(3) Electronic information poses new problems in terms of fees to be charged for access or copies, at the same time that fees have become perhaps the most contentious barrier to access to paper records. At the State Department, for instance, a lawyer, a paralegal and a professional staff member peruse each request to determine its fee status, and routinely send multi-page form letters demanding information about the requester's credentials and purposes before a waiver of fees is granted, or in many cases, denied. According to State's 1988 annual report, this effort involving many tens or possibly hundreds of thousands of dollars collected exactly $8,131 in fees. But the process did come in handy in other ways, such as reducing State's backlog: Some 694 requests the previous year were dumped out of the processing queue into suspended animation because the fee issues weren't resolved when requesters lost interest in telling their life story in order to get a fee waiver which they were -- usually falsely -- led to believe would cost them hundreds or thousands of dollars for each request.

(4) The enormous value-added inherent in any electronic information collection also raises the stakes in what is often a pitched battle between private industry and public interest advocates over government dissemination of information. While all sides can agree that basic principles of public access to government information must be affirmed and enhanced, when the discussion turns to the dissemination functions of government, it gets more delicate. After all, one person's "access" is another one's "dissemination": dial-up remote access to an agency database sounds great to a reference librarian, but may directly threaten a private-sector franchise over the same or similar information. This tendency dictates that

the first priority of any initiative on electronic information should be to consolidate the access principles we all can agree on.

IV. The new technologies do bring some new problems beyond those we've seen with paper records. In this regard, the OTA report of October 1988 provides an excellent summary and discussion. Prime among the new issues is the **blurring of the "record/nonrecord" distinction** so important in FOIA caselaw. When applied to relational databases which link disparate terms through non-linear pathways, the record/nonrecord distinction loses its precision. We would echo the OTA report's recommendation that the FOIA is an **"access to information" statute** rather than an "access to records" statute, and toward a focus on the substance or informational content of databases rather than the programming or other manipulation necessary to extract or interpret them.

V. Again, we need to emphasize to agencies that Congress has made a commitment to the principles embodied in the Freedom of Information Act. These core principles need to be restated and enforced by **rigorous, effective, and most importantly -- regular -- Congressional oversight**, not just by public interest litigation (although we're certainly doing our part). Committee staff reports reviewing Congressional intent versus agency practices on key issues have been enormously helpful in FOIA appeals and litigation, when voted out by the full committee. Hearings which hold accountable agencies which have been unresponsive are also very useful. The current hearings by this Subcommittee, as well as the hearings and interrogatories by Senator Leahy's subcommittee in the other house, are welcome developments in this regard. One recommendation here would be to bring up the Department of Justice officials who keep telling agencies that "no reprogramming whatsoever" should be done in response to FOIA requests.

A productive set of interrogatories might ask Justice for all their memos and guidances, which would form the basis for a record and a hearing to tell them they're wrong. It would be highly useful for the appropriate Congressional committees to produce a Bureaucrat's Guide to the FOIA, similar to the excellent Citizen's Guide to the FOIA, and perhaps to host training sessions on these issues together with the Congressional Research Service.

VI. Ultimately, there may be a need for explicit statutory language that will clarify and codify Congress's intent these principles in an overall expansion of access rights. Electronic issues will be the leading edge of this new consideration, but unless we deal with the problems that plague paper records, new electronic language will fall prey to the same vicissitudes as previous access statutes. The other major danger of such a legislative initiative, especially in regards to electronic information, is that it opens the prospect of a Pandora's box effect, inviting the dozens of FOIA-gutting exemptions waiting in the back pockets of those who are no friends of access, particularly technical data exemptions. Great care must be taken, as this Subcommittee is beginning with these hearings, to build a record that argues for more access, not less, and that preempts the arguments of national security, better law enforcement, or greater competitiveness that are always and will be again trotted out on behalf of a more closed society and government.

I commend you, Mr. Chairman, and the Members and staff of this Subcommittee, for beginning the urgent process of addressing the issues raised by electronic information. We at the National Security Archive look forward to working with you towards more access to more information, for a more truly democratic society.

Attachments:

1. Advisory Board of the National Security Archive.

2. Decision and Order, Office of Hearings and Appeals, U.S. Department of Energy, December 18, 1987.

3. Decision and Order, Office of Hearings and Appeals, U.S. Department of Energy, May 26, 1988.

4. Order, National Security Archive v. Central Intelligence Agency, Civil Action No. 88-119 SSH, Judge Stanley S. Harris, July 26, 1988.

5. "White House Barred from Destroying NSC Files," Washington Post, January 20, 1989.

6. "Court Orders Halt to NSC Tape Destruction," The News Media and the Law, Winter 1989.

7. FOIA appeal denial, Executive Office of the President, Office of Administration, April 6, 1989.

8. Government Exhibit 177 from the trial of Oliver North, showing 736 of 737 PROFS notes in North's computer memory on November 22, 1986 being deleted by November 29, 1986.

9. "Former Watergate Sleuth Founds Security Archive," National Journal, April 5, 1986.

10. Two PROFS notes to Oliver North from Robert McFarlane and John Poindexter, respectively.

11. "Secrecy Before The Law," Sacramento Bee, January 10, 1987.

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Department of Energy
Washington, DC 20585

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Quinlan J. Shea, Esquire
The National Security Archive
Suite 500
1755 Massachusetts Avenue, N.W.
Washington, D.C. 20036

DEC 18 1987

Re: Case No. KFA-0146

Dear Mr. Shea:

The Department of Energy has considered the Freedom of Information Act Appeal filed by you on behalf of the National Security Archive. As the enclosed Decision and Order indicates, the DOE has determined that your Appeal be granted.

If you have any questions regarding this Decision and Order, please contact Richard W. Dugan, Associate Director, Office of Hearings and Appeals, Department of Energy, Washington, D.C. 20585, telephone number (202) 586-2860.

Sincerely,

George B. Breznay
Director
Office of Hearings and Appeals

Enclosure

Celebrating the U.S. Constitution Bicentennial — 1787-1987

Department of Energy
Washington, DC 20585

DEC 18 1987

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Appeal

Name of Petitioner: The National Security Archive

Date of Filing: November 24, 1987

Case Number: KFA-0146

On November 24, 1987, The National Security Archive (NSA), a private non-profit group, filed an Appeal from a determination issued to it on October 22, 1987 by the Deputy Assistant Manager for Information Services (Deputy Assistant) of the DOE's Office of Scientific and Technical Information (OSTI). In that determination, the Deputy Assistant identified and released three documents as being responsive to a request for information made by the NSA pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. In its Appeal, the NSA requests that we direct the Deputy Assistant to conduct a thorough search for additional responsive documents.

The FOIA requires that documents held by federal agencies generally be released to the public upon request. Pursuant to an appropriate request, agencies are required to search their records for responsive documents. If responsive documents cannot be located, the requester must be told whether the requested record is known to have been discarded or never to have existed. 10 C.F.R. § 1004.4(d).

OSTI maintains studies, reports and other documents containing unclassified scientific and technical information. It receives these documents from various sources, including DOE program offices, DOE contractors, and foreign governments. For example, all contractors engaged in DOE funded research, development, or demonstration projects are required to file periodic reports on the results of their projects. OSTI serves primarily to disseminate the technical information it receives to contractors having an interest in it and to the public at large. However, access to some of the reports is limited to specified groups or agencies. Such limited-access documents ("limited reports")

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include reports that contain information such as "unclassified controlled nuclear information" (10 C.F.R. Part 1017), "export controlled technical data" (10 C.F.R. Part 810), copyrighted information, or proprietary data (48 C.F.R. § 952.227-75(a)(2)).

In its multi-part request, the NSA sought information pertaining to the limited access documents maintained by OSTI. The NSA sought (1) a list of limited reports covered by an August 4, 1987 OSTI notice to various agencies and organizations regarding the availability of selected limited reports on microfiche, (2) copies of any other OSTI notices regarding limited reports and a list of the reports covered by those notices, (3) copies of all program documents which explain or define the limited reports program or which show how it in fact has operated, and (4) reading room access in Washington, D.C., to all limited reports identified in items (1) and (2) of its request.

In her response, the Deputy Assistant released to the Appellant three DOE Orders identified as being responsive to item 3 of the NSA's request. The Deputy Assistant found that there was no list of limited reports covered by the August 4 notice and stated that the agency is not required to create a list for purposes of complying with the FOIA. She also stated that there were no other notices regarding limited reports. As no lists of limited reports were identified pursuant to items 1 and 2 of the request, no such lists or reports were made available to the requester.

In its Appeal, the NSA argues that some list of limited reports available from OSTI must exist, because otherwise OSTI personnel would not know what reports to supply if they were requested pursuant to the August 4 notice by a party authorized to receive them. The NSA also asserts that other program documents must exist concerning the operation of the limited reports program. The NSA therefore asks that we remand this matter to the Deputy Assistant for a new search for responsive documents. In the course of the present proceeding, the Appellant informed us that it primarily seeks a list of limited reports pursuant to items 1 and 2 of its request, not each report itself. It therefore stated that it will defer its request for access to the reports, until the NSA has received the lists and informed OSTI of the specific reports in which it is interested. Telephone conversation between Quinlan Shea, NSA, and Bryan MacPherson, OHA (November 30, 1987).

We have stated on numerous occasions that an FOIA request deserves a thorough and conscientious search for responsive documents, and we have not hesitated to remand a case where it is evident that the search conducted was in fact inadequate. See, e.g., Hideca

Petroleum Corp., 9 DOE ¶ 80,108 (1981); Charles Varon, 6 DOE ¶ 80,118 (1980).

In reviewing this Appeal, we contacted the Deputy Assistant to determine whether additional documents responsive to the NSA's request might exist. She explained that OSTI receives and processes over 1,000 limited reports per year. Records of these reports are maintained in a computerized database. According to the Deputy Assistant, no list of documents generally available to authorized parties exists. Rather, if a particular authorized party requests limited reports, the "profile" of that party can be entered into the computer and a list of reports available and of interest to that party retrieved. She also stated that no limited reports have yet been provided to authorized parties pursuant to the August 4 notice, and that no specific documents are currently identifiable as being subject to that notice. The Deputy Assistant claimed that processing the NSA's request would require that the computer be programmed to retrieve records concerning the limited reports sought by the NSA. She stated her understanding that the FOIA does not require agencies to create new records.

The Deputy Assistant is correct that agencies need not create new records when responding to an FOIA request. However, she misconstrues the obligations of federal agencies when applying the FOIA to computerized records. Agencies need not commit to paper information that does not already exist in some form as an agency record. For example, they may not be required to provide an opinion or add an explanation to a document. NLRB v. Sears, Roebuck, & Co., 421 U.S. 132, 161-62 (1975). With respect to computerized records, an agency need not make computations, restructure, or in any other way manipulate the data contained in computerized records. Yeager v. DEA, 678 F.2d 315, 322-23 (D.C. Cir. 1982). Nevertheless, the mere retrieval of information already existing in a database, even if a computer must be programmed to select specified types of data, does not constitute creation of a new record. Rather, it is more in the nature of selecting from a paper document information which is within the scope of a request and deleting information that is unwanted or exempt. In this regard, the court in Yeager explained:

> It is thus clear that computer-stored records ... are still "records" for purposes of the FOIA. Although accessing information from computers may involve a somewhat different process than locating and retrieving manually stored records, these differences may not be used to circumvent the full disclosure policies of the FOIA. The type of storage system which the agency has

> chosen to maintain cannot diminish the duties imposed by the FOIA.
>
> ....
>
> The argument that a document with some information deleted is a "new document," and therefore not subject to disclosure has been flatly rejected. This is true even if all but one or two items of information have been deleted.

Id. at 321 (citations omitted). See also Long v. IRS, 596 F.2d 362 (9th Cir. 1979).

Consequently, the search for and selection of the titles of the limited reports available from OSTI's database does not constitute the creation of a new document, and the Deputy Assistant must provide such information pursuant to an FOIA request. 1/ In addition, our discussion with the Deputy Assistant concerning the manner in which the limited reports program is operated revealed that additional guidelines, manuals and other documents responsive to NSA's request for "program documents" (item 3) might exist. We also believe that additional notices responsive to item 2 of the NSA's request may exist. Under these circumstances, we should grant the NSA's Appeal and remand the request to the Deputy Assistant for a new and thorough search for responsive documents.

As noted above, we have assumed for the purposes of the present Appeal that the NSA sought a list of all limited reports in its original request. See n.1. However, the NSA has also indicated that it is likely to be interested in only a small portion of the documents that are identified. Upon remand, we believe that the Deputy Assistant, or her designee, should consult with the Appellant in order to clarify and possibly narrow the scope of the request. In this regard, the Deputy Assistant should inform the NSA of the structure and general contents of OSTI's database

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1/ It is reasonable to assume that by requesting both a list of reports covered by the August 4 notice and a list of reports covered by any other notices, the NSA was in fact seeking a list of all limited reports available from OSTI. The NSA's request should have been treated as such, or the Deputy Assistant should have sought a clarification of the scope of the request from the NSA, or assisted the NSA in reformulating its request in accordance with 10 C.F.R. 1004.4(c)(2).

containing information concerning limited reports. This will allow the NSA to specify in greater detail the subject matter and types of reports in which it is interested. The Deputy Assistant shall provide the NSA with any responsive information from the database that is not exempt from mandatory disclosure pursuant to 5 U.S.C. 552(b). 2/

It Is Therefore Ordered That:

(1) The Appeal filed by the National Security Archive on November 24, 1987 is hereby granted as set forth in Paragraph (2) below.

(2) This matter is remanded to the Deputy Assistant Manager for Information Services of the DOE's Office of Scientific and Technical Information who shall in accordance with the principles set forth above promptly conduct a new search for additional documents responsive to the NSA's request.

(3) This is a final order of the Department of Energy of which any aggrieved party may seek judicial review pursuant to the provisions of 5 U.S.C. 552(a)(4)(B). Judicial review may be sought either in the district in which the requester resides or has a principal place of business or in which the agency records are situated or in the District of Columbia.

George B. Breznay
Director
Office of Hearings and Appeals

Date: DEC 1 8 1987

2/ Consultation with the NSA concerning the types of "program documents" sought could also prove helpful, since in its Appeal the NSA claims that it specifically sought records pertaining to all determinations that individual reports should be limited, and we do not read this portion of its initial request so broadly.

Department of Energy
Washington, DC 20585

JUN 1 1988

Quinlan J. Shea, Esquire
The National Security Archive
1755 Massachusetts Avenue, N.W.
Washington, D.C. 20036

Re: Case No. KFA-0158

Dear Mr. Shea:

The Department of Energy has considered the Motion filed by the Office of Scientific and Technical Information to clarify the Decision that was issued to the National Security Archive on December 18, 1987. Enclosed for your information is a copy of the Decision and Order.

If you have any questions regarding this Decision and Order, please contact me at telephone number 586-2860.

Sincerely,

fr Richard W. Dugan
Associate Director
Office of Hearings and Appeals

Enclosure

Department of Energy
Washington, DC 20585

MAY 26 1988

DECISION AND ORDER
OF THE DEPARTMENT OF ENERGY

Motion for Clarification

Name of Petitioner:	Office of Scientific & Technical Information
Date of Filing:	January 26, 1988
Case Number:	KFA-0158

On January 26, 1988, the DOE's Office of Scientific and Technical Information (OSTI) filed a Motion for Clarification of a Decision and Order issued on December 18, 1987, to the National Security Archive (NSA), a private non-profit organization. The National Security Archive, 16 DOE ¶ 80,137 (1987). That Decision granted an Appeal by the NSA of an OSTI determination concerning a request for information made by the NSA pursuant to the Freedom of Information Act (FOIA), 5 U.S.C. § 552, as implemented by the DOE in 10 C.F.R. Part 1004. The Decision directed OSTI to contact the NSA in order to clarify the scope of the FOIA request and to then search its computerized database for information responsive to the request.

The FOIA requires that records held by federal agencies generally be released to the public upon request. Pursuant to an appropriate request, agencies are required to search their records for responsive documents. If responsive documents cannot be located, the requester must be told whether the requested record is known to have been discarded or never to have existed. 10 C.F.R. § 1004.4(d). Where a request does not reasonably describe the records sought, DOE regulations require the agency to confer with the requester in an attempt to restate the request in a manner that would allow the agency to comply. 10 C.F.R. § 1004.4(c)(2). The FOIA applies only to existing documents and agencies are not required to create new documents in response to an FOIA request. 10 C.F.R. § 1004.4(d).

I. BACKGROUND

OSTI maintains studies, reports and other documents containing scientific and technical information. It receives these documents from various sources, including DOE program offices, DOE contractors, and foreign governments. For example, all contractors engaged in DOE funded research, development, or demonstration projects are required to file periodic reports on the results of their projects. OSTI's archives contain over 600,000 documents, which date back to the early 1940's.

Most of the documents maintained by OSTI are publicly available, and OSTI serves primarily to disseminate the technical information it receives to contractors, and others, having an interest in it. 1/ However, access to some of the unclassified reports is limited to specified groups or agencies. Such limited-access documents include reports that contain information such as "unclassified controlled nuclear information" (10 C.F.R. Part 1017), "export controlled technical data" (10 C.F.R. Part 810), copyrighted information, or proprietary data (48 C.F.R. § 952.227-75(a)(2)). OSTI receives and processes over 1,000 limited-access reports per year.

In its request, the NSA sought information pertaining to the limited-access documents maintained by OSTI. Among the information sought by the NSA was a list of limited-access reports covered by an August 4, 1987 OSTI notice (the Goad memorandum) to various agencies and organizations regarding the availability of selected limited-access reports on microfiche. No list of limited-access documents was provided pursuant to this FOIA request. OSTI stated in its determination that no list of limited-access reports covered by the Goad memorandum existed, and asserted that the agency is not required to create a list for purposes of complying with the FOIA.

On November 24, 1987, the NSA filed an Appeal of OSTI's determination. In reviewing the Appeal, we contacted OSTI to determine whether a list of documents covered by the Goad memorandum might exist. We were informed by OSTI that records of both publicly available and limited-access reports are maintained in a computerized database; however, no list of documents generally available to authorized parties exists. Rather, if a particular authorized party requests limited-access reports, the "profile" of that party can be entered into the computer and a list of reports available and of interest to that party retrieved.

In considering the NSA's Appeal, we determined that, contrary to OSTI's contention, providing a list of documents derived from OSTI's database would not constitute the creation of a record. We

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1/ OSTI receives approximately 20,000 documents a year that are publicly available. A list of most of these public documents may be found in "Energy Research Abstracts" which is published every two weeks by the Government Printing Office.

granted the appeal and directed OSTI to use its database to provide the list of documents sought by the NSA. 16 DOE at 80,608. Since the NSA indicated that it was interested in only a small portion of the documents that would be identified, and was unaware of the number of limited-access documents which exist, we stated that upon remand OSTI should consult with the NSA in order to clarify and possibly narrow the scope of the request. In order to aid the NSA in reformulating its request, we directed OSTI to inform the NSA of the structure and general contents of its database.

In its present Motion, OSTI challenges our statement in the December 18 Decision that "the mere retrieval of information already existing in a database, even if a computer must be programmed to select specified types of data, does not constitute creation of a new record." 16 DOE at 80,608. OSTI maintains that the statement is overbroad and is inconsistent with FOIA requirements. 2/ The NSA in its response to OSTI's Motion argues that the prior Decision correctly applied the law.

II. ANALYSIS

The issue raised in this proceeding--i.e., the extent to which agencies must utilize their computer capabilities in order to comply with FOIA requests--involves a relatively new and unsettled aspect of FOIA law. It is clear that agencies are not required to create new records pursuant to an FOIA request. 3/ Thus, the FOIA does not require agencies to answer questions, generate explanatory material, compile statistical data, or provide any other information that is not already contained in agency records. See, e.g., NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 162 (1974); Borom v. Crawford, 651 F.2d 500 (7th Cir. 1981); Giza v. HEW, 628 F.2d 748 (1st Cir. 1980); Johnny Paxton, 10 DOE ¶ 80,117 (1982);

2/ In its original Motion, OSTI also argued that we may have misunderstood the facts of the case as they relate to the capability of OSTI to recover information from its database. OSTI therefore also asked that we modify those portions of the prior Decision which required it to use its database to provide the NSA with a list of documents. Subsequent to the filing of the Motion, OSTI provided the NSA with a list of the documents covered by the Goad memorandum, which the NSA states satisfies that portion of its request. On March 30, 1988, OSTI withdrew this portion of its Motion.

3/ Of course, an agency may elect to prepare a new record either in order to accommodate a requester or because it is the least burdensome manner of complying with a request.

Stephen M. Shaw, 6 DOE ¶ 80,177 (1980). But cf. Diamond v. FBI, 487 F. Supp. 774 (S.D.N.Y. 1979) (explanation of technical jargon contained in documents required).

It is also clear that the FOIA is not limited to paper records. See, e.g., Weisberg v. Department of Justice, 631 F.2d 824 (D.C. Cir. 1980) (photographs); Save the Dolphins v. Department of Commerce, 404 F. Supp. 407 (N.D. Cal. 1975) (motion picture); cf. Nichols v. United States, 325 F. Supp 130 (D. Kan. 1971), aff'd on other grounds, 460 F.2d 671 (10th Cir. 1972) (gun, clothing and other physical articles are not "records"). In this regard, there can be no doubt that computer-stored records, whether they are maintained in the central processing unit, on magnetic tape or disks, or in some other form, are still "records" and are subject to the FOIA. Courts have emphasized that differences in the form in which computerized information is maintained and in the manner in which computerized records are located and retrieved may not be used to circumvent the full disclosure policies of the FOIA, and generally have applied by analogy the FOIA requirements applicable to paper records. 4/ See, e.g., Yeager v. DEA, 678 F.2d 315, 321 (D.C. Cir. 1982); Long v. IRS, 596 F.2d 362, 365 (9th Cir. 1979); St. Paul's Benev. Ed. & Miss. Inst. v. United States, 506 F. Supp. 822 (N.D. Ga. 1980); see also Stephen M. Shaw, 6 DOE ¶ 80,177 (1980). While the processes may be different, many computer searches are in substance essentially the same as manual searches and involve comparable methods and skills. For example, to search paper records a methodology must be developed and the relevant files or file drawers manually searched for the requested information. Similar methodologies must be developed and used when a computer is instructed to perform the search. A computer search may be electronic in nature, but it is not necessarily any different in essence. It merely uses different tools--the computer and its software--to conduct the search. Database programs generally can produce lists of items in the database. Thus, were a request made for a list of all documents in a database, OSTI would be required to produce the list.

4/ For example, the FOIA requires that where a requested record contains both material that is exempt from mandatory disclosure and material that is not, agencies must release all reasonably segregable non-exempt information. The courts in Yeager and Long held that, as with deletions from paper records, using a computer's capabilities to delete exempt material from computerized records does not constitute the creation of a new record, and therefore does not justify denying access to the non-exempt information.

There is also no doubt that agencies are not required to perform calculations, manipulate data, or restructure records in any way pursuant to an FOIA request, since this would constitute the creation of a new record. 5/ The more difficult issue is the extent to which agencies must search a database in order to select those records within the database that are requested pursuant to the FOIA. On this issue, no precise answer can be formulated in the abstract. As noted above, this is an unsettled area of the law and there are few judicial determinations to guide us. Furthermore, an agency's obligation to search its database may depend upon the particular circumstances presented, including how the database is structured, the capabilities of the agency's computer system and personnel, and the specific information requested. We believe, however, that to the extent that OSTI maintains records in a database and already has software that is capable of searching the database, the FOIA requires OSTI to use that software to search the database for the requested records. This is true even if the type of search that must be performed is different from the type normally performed by OSTI. A search of this nature is not, in substance, significantly different from a search of a file cabinet for paper records that are responsive to a request. If the FOIA required anything less it would allow agencies to conceal information from public scrutiny by placing it in computerized form. This would be inconsistent with the FOIA's policy of the fullest possible disclosure.

We do not believe, however, that the FOIA requires OSTI to edit the records obtained through such a search. Thus, a requester may not ordinarily require an agency to delete fields the requester does not want from a record or to print the record in any specific format. 6/ To the extent that our prior Decision could have been

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5/ The requester in Yeager had argued that the agency should not delete the exempt portions, but should utilize its computer capabilities to modify the data to render it non-exempt, so that it could be released in a form that would be useable by the requester. The court rejected this argument. It held that the fact that records are maintained in computerized form does not impose any special obligations on an agency that would not be present if the records were maintained in paper form and that the agency consequently need not manipulate the data in order to comply with the request.

6/ A database is a collection of information on a given subject. The information is grouped into "records" and each record is composed of "fields." For example, in a database similar to

(cont'd)

read as implying that the NSA could specify the format or the contents of the list, it went beyond the requirements of the FOIA. Of course, OSTI may choose to comply with requests to present the information in a particular form and it may delete segregable exempt information.

A more difficult issue arises where OSTI does not already possess the software necessary to comply with an FOIA request, and therefore must write or modify a program (but not manipulate data) in order to perform the search necessary to retrieve the requested data. In our view, "programming" a computer may involve a simple procedure that can be done in a few minutes, such as changing a few lines in an existing program. It may, on the other hand, require many man-hours to write a complex program. Moreover, the distinction between writing a new program and using existing software is not always clear. There have been no definitive judicial pronouncements on this issue, and we did not intend to imply in the December 18, 1987 Decision that OSTI must reprogram its computers in order to comply with an FOIA request irrespective of the amount or type of programming required. Based upon our understanding of OSTI's computer system and the facts presented to us, we concluded in our December 18, 1987 Decision that OSTI had software capable of searching its database in a manner that would provide the NSA with the requested list. We know of no basis for modifying that case-specific determination. Nor do we believe it appropriate at the present juncture to specify the extent, if any, to which an agency is required to write or modify a program in order to retrieve computerized information. 7/ We shall consider this matter in the future on a case-by-case basis.

(cont'd)

OSTI's, all the information on a given document could constitute a record and each item, e.g., author, title, or spedate, would constitute a field. Generally, it is possible to search a database and retrieve records where a selected field meets specified parameters. For example, if a database of a listing of documents contained a field for the date the documents were authored, it would usually be possible to retrieve a list of all documents that were authored during a specified time period.

7/ OSTI cites Clarke v. United States, No.84-1873 (E.D. Pa. Jan. 24, 1986) (unpublished decision) in support of its position that agencies are not required to reprogram their computers in order to extract information pursuant to an FOIA request.

(cont'd)

We wish to point out that even if the FOIA might not in a particular case require an agency to "search" a database, the entire database nevertheless would be subject to the FOIA. Thus, an agency, even where not required to reprogram its computer, would still be required to identify and provide a copy of the entire database, except for those portions falling within one of the exemptions to mandatory disclosure (or beyond the scope of the request), either in paper or computerized form (allowing the requester to perform its own search). Moreover, any paper records containing information that is also in a database would continue to be subject to the FOIA. For example, the NSA's request to OSTI for a list of documents could have been satisfied by providing a copy of the title pages of the relevant documents. Milgrim, Thomajan, Jacobs & Lee, 5 DOE ¶ 80,181 at 80,826 (1980)(quoting Disabled Officer's Ass'n v. Rumsfeld, 428 F. Supp. 454, 457-58 (D.D.C. 1977)). Finally, as pointed out in our December 18 Decision, before OSTI could properly deny a request on the ground that it would require extensive reprogramming of its computer, it should consult with the requester in an effort to reformulate the request in a manner that would not require reprogramming. 10 C.F.R. § 1004.4(c)(2). See also Ferri v. Bell, 645 F.2d 1213, 1219-21 (3d Cir. 1981).

In sum, the issues involved in the application of the FOIA to computerized records involve a relatively new and unsettled area of the law. While it is clear that the FOIA does not require agencies to use their computer capabilities to manipulate or reformulate data in response to an FOIA request, computerized

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(cont'd)

In Clarke, the requester sought the names and addresses of institutional holders of corporate bonds. In order to retrieve this information, not only would it be necessary to develop a computer program at a cost in excess of $3,800, but entities identified as a result of the computer search would have to be contacted to determine whether they were in fact institutional rather than individual bondholders. Thus the request would have involved much more than a mere search of a database. Moreover, there was an alternative ground for withholding the requested material in Clarke, and the court did not give any detailed explanation of its reasons for denying the request. Under these circumstances, we do not believe that this single district court opinion can be interpreted to mean that agencies can never be required to perform any reprogramming in order to comply with an FOIA request.

records are nevertheless subject to the FOIA and agencies must use their existing software and computer facilities to retrieve such records pursuant to an appropriate request. We take no position at the present time on the extent to which agencies must reprogram their computers in order to respond to an FOIA request. We will address this issue in the future on a case-by-case basis.

It Is Therefore Ordered That:

The Motion for Clarification filed by the Office of Scientific and Technical Information on January 26, 1988 is hereby granted as set forth in the foregoing Decision.

George B. Breznay
Director
Office of Hearings and Appeals

Date: MAY 26 1988

FILED

JUL 26 1988

CLERK, U.S. DISTRICT COURT
DISTRICT OF COLUMBIA

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

NATIONAL SECURITY ARCHIVE,)
)
Plaintiff,)
)
v.) Civil Action No. 88-119 SSH
)
CENTRAL INTELLIGENCE AGENCY,)
)
Defendant.)

ORDER

This matter is before the Court upon defendant's motion to dismiss this action brought under the Freedom of Information Act (FOIA), 5 U.S.C. § 552, on the ground of mootness because defendant has produced the information that plaintiff requested from it. Plaintiff concedes that defendant has produced the requested information; however, plaintiff objects to the form in which defendant has produced the information. Plaintiff wants defendant to release its electronic data base of the information and is not satisfied with the release of a list containing all the requested information. "It is true that an agency need not respond to a FOIA request for copies of documents where the agency itself has provided an alternative form of access." Tax Analysts v. United States Department of Justice, No. 86-5625, slip op. at 8 (D.C. Cir. April 29, 1988), reh'g denied, slip op. (D.C. Cir. July 15, 1988). See also Dismukes v. Department of the Interior, 603 F. Supp. 760 (D.D.C. 1984) (an agency has no obligation under FOIA to accommodate a particular requester's preference regarding the format of requested information, and the agency need only provide responsive, nonexempt information in a reasonably accessible form). Defendant has responded to plaintiff's request under FOIA, and the information is in a reasonably accessible form. Nothing precludes plaintiff from creating its own electronic data base from the released information. Accordingly, it hereby is

ORDERED, that defendant's motion to dismiss is granted.

SO ORDERED.

Stanley S. Harris

Stanley S. Harris
United States District Judge

Date: 2 6 JUL 1988

The Washington Post
Friday, January 20, 1989

White House Barred From Destroying NSC Files

By George Lardner Jr.
Washington Post Staff Writer

A federal judge ordered the Reagan White House last night to stop its last-minute destruction of secret National Security Council computer messages such as those unearthed in the Iran-contra scandal.

Assistant Attorney General John R. Bolton complained that the decree would gravely impair "an orderly transfer of power" to President-elect George Bush at noon today, but senior U.S. District Court Judge Barrington Parker brushed aside the administration's complaint at an emergency hearing.

"The world isn't going to cave in," Parker said in issuing a temporary restraining order against President Reagan, Bush and the National Security Council (NSC) staff.

The order, issued at 6:10 p.m., prohibited further destruction or alteration of tapes in the so-called PROFS system used by NSC and some White House staff members to send messages to one another electronically.

Bolton told the court that "some deletions have been made over the course of the last several days," but he said he would immediately tell the White House to stop purging the electronic files.

The lead plaintiff in the case, Scott Armstrong, executive director of the National Security Archive, a nonprofit research institute, said he had been told by government archivists in recent days that PROFS system tapes other than those turned over to Iran-contra investigators "have not been and will not be preserved as a 'permanent record' of the Reagan administration."

The archivists, Armstrong said in an affidavit, told him the only PROFS messages to be kept would be those already printed out and maintained in paper form. Armstrong said the Iran-contra affair demonstrated that many important messages existed only on tape.

The Senate and House Iran-contra committees used them, for example, in tracking the controversial revisions of the White House "chronology" that was put together November 1986 just before it became public that profits from arms sales to Iran had been diverted to the contra rebels in Nicaragua. PROFS messages include the time and date they were recorded.

Bolton argued that all PROFS messages relevant to the Iran-contra affair had already been turned over to investigators and that it was important for departing NSC staffers to clean out their computer files along with their desks.

"This is not some sinister conspiracy," Bolton said. "There's nothing untoward or improper about it." Leaving the NSC computer system clogged with Reagan administration data, he argued, would "affect the ability of the new president to get his administration up and running."

Parker said he doubted that his order, which will expire Jan. 30, would pose a great inconvenience. He assigned the case to U.S. District Court Judge Charles R. Richey, who is to conduct a hearing Wednesday.

The attorney for the plaintiffs, Kate Martin, director of the American Civil Liberties Union's National Security Litigation Project, said the suit was filed only after government archivists said the tapes would not be preserved because they were not covered by the 11-year-old Presidential Records Act. Former senator Gaylord Nelson (D-Wis.), another plaintiff, was co-author of the law.

Parker said he did not consider the case "the strongest" candidate he has seen for a temporary restraining order, but said he was satisfied that it warranted one until Richey takes a closer look.

Armstrong told reporters after the hearing that he does not know how many PROFS messages might still be retrievable.

WASHINGTON, D.C.

Court Orders Halt to NSC Tape Destruction

On the eve of the inauguration, the National Security Archive and other public interest groups persuaded a federal judge to block temporarily Reagan administration plans to erase massive amounts of White House documents stored on computer tapes.

The groups argued that under the Presidential Records Act, the National Archives should determine whether documents on the tapes should be preserved for the public.

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In 1985, the National Security Council began using IBM's Professional Office System software to manage information produced by networked computers. With PROFS the agency could create, index, store and retrieve records on magnetic tape and eliminate the avalanche of paper records that would accumulate otherwise.

The paperless system worked efficiently and well. A year later the government expanded PROFS so that high level officials in the White House, the Old Executive Office Building and Cabinet agencies had access to it.

Another facet of the system made it very useful: it maintained backup copies of all documents. When the Iran-Contra scandal came to light, the NSC staff shredded important paper records and deleted records from its computers. But the PROFS backup tapes allowed investigators to reconstruct much of the information.

Both the Tower Commission and the independent counsel relied on PROFS information.

In late January a researcher for the National Security Archive asked an employee of the National Archives and Records Administration about how to locate White House records from the PROFS network. The Archive is a public interest group headed by former *Washington Post* reporter Scott Armstrong, which collects and studies unclassified national security information.

The NARA official said those records would not be preserved by the National Archives.

The National Security Archive and other groups which require government information for their work met Jan. 18 with John Fawcett, head of the Office of Presidential Libraries of NARA, to urge the agency to preserve the tapes.

Scott Armstrong, head of National Security Archive, led tape destruction fight

Fawcett said NARA would collect only PROFS messages that the White House determined were "presidential records" and committed to paper for permanent retention.

The Presidential Records Act requires NARA to preserve historically and administratively significant records. Fawcett said that NARA has advised the White House and NSC that, to comply with the act, they should create paper copies of electronic records they deem significant. Other records on the PROFS tapes could be erased, NARA said.

Believing that Reagan administration officials would erase PROFS tapes as a housecleaning measure on the eve of President George Bush's inauguration, Armstrong, the Center for National Security Studies, former Senator Gaylord Nelson, an author of the Presidential Records Act, and others asked the U.S. District Court in Washington, D.C., to order the Reagan and Bush administrations to stop destroying PROFS tapes. They said that the Archivist of the United States should review the tapes to determine the "significance" of documents.

If the court did not act, Armstrong argued, valuable records would be lost. He contended that the law covers electronic as well as paper records, citing a proposed NARA policy on electronic records that recognizes that they, like paper records, must be disposed of in accordance with federal laws and regulations.

In a hearing Jan. 19 before Judge Barrington Parker, the government argued that a delay in erasing the tapes would prevent "an orderly transfer of power" and "affect the ability of the new president to get his administration up and running."

If the Reagan administration were to leave the tapes full of data it would be like leaving old furniture behind when new tenants are trying to move in, government lawyers said.

Judge Parker countered that old tenants do not stack up their furniture and burn it. At 6 p.m. on the eve of the inauguration, the judge issued a temporary order barring destruction of data on the Reagan administration PROFS tapes. He assigned the case to another judge for a hearing as to the need for a permanent injunction against destruction before the archivist reviews the tapes.

Briefs on a preliminary injunction were due in mid-February. *(Armstrong v. Reagan)* ☐

THE NEWS MEDIA AND THE LAW WINTER 1989
(published by The Reporters Committee
for Freedom of the Press)

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF ADMINISTRATION
Washington, D.C. 20503

April 6, 1989

Dear Mr. Armstrong:

This is in response to your March 14, 1989 letter appealing the Office of Administration denial of your January 9, 1989 Freedom of Information Act (FOIA) request seeking "copies of all tapes, discs, and/or other storage formats for the PROFS System serving the Executive Office of the President (EOP) and/or the National Security Council, and all information contained therein, as well as all the records in whatever format derived from the PROFS system, from the date of the installation of said system to the end of the Reagan administration."

As you acknowledge in your appeal letter, this FOIA request is the subject matter of a lawsuit pending in the Federal District Court for the District of Columbia, Armstrong v. Bush, Civ. No. 89-0142.

Your appeal is denied on the same grounds that were set forth in our initial denial to you dated February 17, 1989. Your request, fails to reasonably describe the records sought as required by 5 U.S.C. Sec. 552(a)(3)(A). Moreover, your appeal is denied because the data generated on the PROFS system does not constitute "agency records" under the FOIA. Agency record material within the Office of Administration is kept in hard copy format.

Finally, to the extent that the material sought is created or retained by the personal staff of the President and/or by units within the Executive Office of the President whose sole function is to advise and assist the President, your request is denied because the material is not subject to the Freedom of Information Act.

This letter is a determination of which you may seek judicial review in accordance with the provisions of 5 U.S.C. Sec. 552(a)(4).

Sincerely,

Paul Bateman
Paul W. Bateman
Deputy Assistant to the President for Management and
Director of the Office of Administration

Mr. Scott Armstrong
Executive Director
The National Security Archives
1755 Massachusetts Avenue, NW
Suite 500
Washington, DC 20036

ADDITIONAL CPUA INFORMATION

Per instructions received from Captain Barnes at approximately 1915 5 Feb 87 the data files associated with userid NSOLN were restored to DASD on CPUA from tapes that were created on 15 Nov 86, 22 Nov 86, and 29 Nov 86. The following table summarizes the size of the PROFS note logs.

15 Nov 86 files:

```
6 notes logs:  NOTE     had  698 notes in it.
               FOTE     had    1 note  in it.
               NORTH    had    1 note  in it.
               OFSMAIL  had    5 notes in it.
               57TE     had    1 note  in it.
               88TE     had    1 note  in it.
```

22 Nov 86 files:

```
6 notes logs:  NOTE     had  737 notes in it.
               FOTE     had    1 note  in it.
               NORTH    had    1 note  in it.
               OFSMAIL  had   17 notes in it.
               57TE     had    1 note  in it.
               88TE     had    1 note  in it.
```

29 Nov 86 files:

```
6 notes logs:  NOTE     had    1 notes in it.
               FOTE     had    1 note  in it.
               NORTH    had    1 note  in it.
               OFSMAIL  had    3 notes in it.
               57TE     had    1 note  in it.
               88TE     had    1 note  in it.
```

Kelly Willi
5 Feb 87

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GOVERNMENT
EXHIBIT
177

IN PERSON

Scott Armstrong

By David C. Morrison

Former Watergate Sleuth Founds Security Archive

In 1983, *Washington Post* reporter Scott Armstrong and then-*New York Times* reporter Raymond Bonner, both of whom were researching books on foreign policy, began comparing notes on the government documents they were receiving under the Freedom of Information Act (FOIA).

"It was clear that what was being denied to one was being given to the other; the whole was greater than the sum of the parts," Armstrong said. "So I kind of whimsically said that we should agree on a place to put it all when it's done."

From that offhand remark eventually emerged the National Security Archive. Conceived as a central repository for previously classified government paperwork, the archive has been pledged almost 200 linear feet of already released FOIA material.

When it officially opens its doors in the Brookings Institution annex this summer, the National Security Archive hopes to become, as its grant proposal says, "the long sought-after institutional memory for Washington" that will bring "into a single, one-stop-shopping, institutional setting each available document on a subject . . . available for use by all parties in the ongoing debates over the direction of national policy."

Armstrong, 40, is well suited to serve as the new archive's first director. An FOIA fanatic of sorts, he has filed more than 2,000 requests during his reporting career, freeing up tens of thousands of pages of once-secret documents. "From what I understand, he's unbelievable" as a FOIA filer, said investigative reporter Seymour Hersh. "As someone who has worked against him, [I would say] he's a very tough and knowledgeable reporter."

The route by which Armstrong became a reporter, however, is circuitous, to say the least. It begins in his native Wheaton, Ill., runs through Yale University, where Armstrong earned a degree in philosophy, through Harvard University Law School, where he spent one year, and then to Boston, where he worked in corrections as a "socially active social worker" during the early 1970s.

Thanks to discussions with high school chum Bob Woodward of *The Washington Post*, an unlikely career detour opened up for Armstrong when he took a keen interest in the budding Watergate affair. In 1973, he secured a job as an investigator for the Senate Select Committee on Presidential Campaign Practices, the so-called Watergate Committee. "In Boston I was working to return offenders to the community," Armstrong said. "Now I was taking prominent members of the community and getting them into prison."

As a result of his work for the Senate committee, Armstrong assisted Woodward and Carl Bernstein on *The Final Days* (Simon & Schuster Inc., 1976), a chronicle of the Nixon Administration's last gasps. He joined the *Post* as a reporter in 1976, co-authoring with Woodward a book on the Supreme Court, *The Brethren* (Simon & Schuster, 1979), and winning several awards for his reporting on the Iranian revolution and the Korean influence-peddling scandal that became known as Koreagate.

Armstrong took a leave from the *Post* in 1984 to complete a book on foreign policy decision making during the late Carter years and the early Reagan years. Shoved to a back burner by the archive project, the book—Armstrong and his editors at Alfred A. Knopf Inc. hope—should be finished by late summer. He plans to return to the *Post* once the archive becomes self-supporting through the sale of indexed document sets to university libraries.

Armstrong is no stranger to Washington's official national security community. He spoke last month to a meeting of intelligence and security agency directors, and he has been consulted by Pentagon officials who, burdened by cumbersome security procedures, are seeking to pare down the roughly two billion currently classified documents they must keep track of. "What they don't want classified," Armstrong said, "I want to get."

By and large, those officials are undisturbed by plans for the archive. "As long as he sticks to his plan just to catalog information that has been released, then I don't think there's too many problems," said L. Britt Snider, the Pentagon's director for information security. Snider acknowledged, however, that archive users "putting all of the pieces of a mosaic together and getting into a sensitive area" could create some official discomfort.

Armstrong argued that the archive should save the scores of FOIA offices that process requests in the Washington area considerable time and money by reducing redundant requests for documents.

More important, he said, the archive represents "the ultimate democratization of the national security debate, taking it outside [Washington's] Beltway once and for all." □

Chapter 12, Footnote 127

12-127

UNCLASSIFIED

From: NSJMP --CPUA
To: NSOLN --CPUA

Date and time 04/16/86 19:02:42

N 9212

*** Reply to note of 04/16/86 16:40

-- ~~SECRET~~ --

NOTE FROM: JOHN POINDEXTER
Subject: PRIVATE BLANK CHECK
You may go ahead and go, but I want several points made clear to them. There
are not to be any parts delivered until all the hostages are free in
accordance with the plan that you laid out for me before. None of this half
shipment before any are released crap. It is either all or nothing. Also you
may tell them that the President is getting very annoyed at their continual
stalling. He will not agree to any more changes in the plan. Either they agree
finally on the arrangements that have been discussed or we are going to
permanently cut off all contact. If they really want to save their asses from
the Soviets, they should get on board. I am beginning to suspect that
doesn't have much authority.

cc: NSPBT --CPUA PAUL THOMPSON

[illegible] 5/6/87
[illegible] E.O. 12356
[illegible]

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Chapter 12, Footnote 83

UNCLASSIFIED

From: NSRCM --CPUA Date and time 03/10/86 22:14:26
To: NSOLN --CPUA

N 41078 1364

*** Reply to note of 03/10/86 21:10

SECRET

NOTE FROM: ROBERT MCFARLANE
Subject: How's It Going?

Roger Ollie. I guess I'm a little puzzled about the Iranian wiring diagram. From whom are we getting the word concerning a meeting in the Gulf? Is Gorba involved in that dialogue or is that info coming through the Israelis? It strikes me that it is probably OK to keep Gorba in the dark--to the extent that is possible to do so if there is another channel. Gorba is basically a self-serving mischief maker. Of course the trouble is that as far as we know, so is the entire lot of those we are dealing with. The Soviet threat is the strategic menace and I would guess that they would like to avoid having Russians in Iran. But it is going to take some time to get a feel for just who the players are on the contemporary scene in Teheran. So the sooner we get started the better.

I would be glad to meet to talk about he Marine Corps. I will be having lunch with Paul Nitze this Friday. How about right after that at about 2:00pm in your office?

Frank.y, I would expect the heat from the Hill to become immense on you by summer. Consequently it strikes me as wise that you leave the White House. At the same time, there will be no one to do all (or even a small part of what) you have done. And if it isn't done, virtually all of the investment of the past five years will go do wn the drain.

How's this for a self-serving scenario: 1. North leaves the White House in May and takes 30 days leave. 2. July 1st North is assigned as a fellow at the CSIS and (lo and behold) is assigned to McFarlane's office 3. McFarlane/North continue to work the Iran account as well as to begin to build other clandestine capabilities so much in demand here and there. Just a knee jerk musing.

12-83

8 Jul 87

#Box 34-6
2/2/87

BEST COPY AVAILABLE

The Sacramento Bee

January 10, 1987

Secrecy Before The Law

Over the last two decades, hundreds of historians and journalists, mostly working alone, have used the leverage of the Freedom of Information Act to pry out of unwilling federal officials public documents that shed light on subjects ranging from the Rosenberg spy case to U.S. policy in El Salvador. But often the light has been fleeting and faint. Individual researchers frequently lack the time and money to make systematic use of the law, and national security agencies have not hastened to make documents released under the act easily accessible to other scholars and reporters.

Thus the chagrin of the Reagan administration, no friend of open government, at the new National Security Archive. The archive has been set up by Washington reporters to serve as a public repository for documents released under the Freedom of Information Act and as an active participant in efforts to use the act to build a more complete public record for research into recent U.S. military and foreign policy. To the dismay of the administration, the research center offers a mechanism to break down the isolation of individual scholars and make public information released under the act more genuinely public.

Unable to get rid of the law, the administration is subverting it to make life impossible for the new center. Under its provisions, government agencies are supposed to waive the normal fees charged for searching out and reviewing documents when the requester is a scholarly or journalistic organization. But agencies are refusing to grant the waivers to the new archive, arguing that it is a commercial "broker" of information, even though the services of the new non-profit center are available to researchers without charge. Without the waivers, the center will be severely hampered in carrying out its mission of making public documents more available.

A suit filed by the archive should eventually overturn the government's arbitrary action against this useful resource. But it will not erase the sorry spectacle of an administration so committed to secrecy as to misuse the law to deny citizens greater access to unclassified information about their government at work. How petty.

Mr. WISE. I thank you both. Let me start with NTIS, and then we'll move over to the National Security Archive. For NTIS, it seems to me you're in a bit of a dilemma on pricing. I'm holding up here, for instance, a floppy disk that NTIS sells for $75, and yet right here, I have another floppy disk that our staff bought from the Public Software Library in Houston, TX, a private organization, that cost $5. And so my question comes why a private company sells similar product at a fraction of the cost that NTIS charges.

Dr. CLARK. In your hand, I believe, is an inventory of material that was collected on Government publications. That was a loser. We sold it at $75. I don't know how much money I lose every time I sell one of those, but I'm not coming anywhere close to recovering my cost. The reason is that there was a fairly extensive effort—in fact, probably several staff years of effort—to produce the information on data that are summarized on that diskette.

Mr. WISE. But is it a loser, Mr. Clark, partly because of the price?

Dr. CLARK. Well, I could probably—if I would up the price by perhaps a factor of 10, and I would——

Mr. WISE. That wasn't what I was suggesting.

Dr. CLARK. I do believe that that's the only way I could recover all of the costs that I have invested in producing that diskette. I don't think, for example, if I decreased the price by a factor of 10 that I would have any hope whatsoever of coming close to recovering my investment.

Mr. WISE. Why can a private company sell a similar product at a fraction of the cost?

Dr. CLARK. I don't know what that particular similar product is. I certainly, for under $5 in fact, buy those diskettes for my PC at home. Typically, they are shareware or so-called public domain software. I believe the effort of producing those is the only cost that is being collected.

Mr. WISE. But the information is not copyrighted. Doesn't your cost come from creating the data base?

Dr. CLARK. We only recover the cost at NTIS that we have had to invest in order to provide the information. We don't collect any additional moneys, certainly.

Mr. WISE. Aren't you in a bit of a dilemma, though, because Congress, according to your testimony, mandated that you be self-sustaining, so you have to recover your cost. Yet, you're producing some things that private industry probably would not produce because there's not that much of a market, and yet is very valuable information. If you have to recover your costs, you've got to charge $75 or whatever for things like that.

Dr. CLARK. I think a dilemma is a fair characterization of our situation. I might, with a more optimistic view, say it's a difficult balancing act to achieve our mission, which is the maximum dissemination and the maximum utilization of the information that we can provide.

Mr. WISE. I guess here I'm hitting Congress a little bit, because it seems as though Congress saved NTIS from privatization only so that NTIS could then sell information at 15 times the private sector price. That was a heck of a result.

The testimony from Harold Shill suggests that NTIS may be pricing itself out of the market in some areas, his written testimony. Does NTIS need a congressional appropriation in order to fulfill its mission at a reasonable price?

Dr. CLARK. I would say that at the current time, our prices are reasonable. We certainly work very hard to make and keep those prices reasonable.

Certainly, if there were congressional appropriations, one option would be to reduce our prices. There might be other things that we would do, such as invest more heavily in electronic dissemination, or modernizing the organization. And certainly, that's a matter of continuing examination on the part of both the administration and the Congress.

Mr. WISE. Well, if an agency distributes data through NTIS, the fees charged are much higher than if the FOIA is used. My question is why do we encourage agencies to use NTIS when the price to the consumer is so much higher?

Dr. CLARK. I'm not sure about FOIA pricing, so I guess I can't really respond to that in an informed way. But I can say that in terms of our own pricing and what one gets, during the privatization controversy in the early 1980's, one of the major things that we were told in public hearings was that the long-term archive is of major value to the public. That obviously causes us to incur some costs. We were also told that the ability to have a single data base for a so-called one-stop shop was a major value.

And what we attempt to do to the degree that we can, is to spread all of our costs over all of our products so that the entire organization, in fact, can recover all of its costs.

I would point out that our labor costs are our principal cost element, and the employees of NTIS are the lowest paid employees in the Department of Commerce.

Mr. WISE. I am glad we got that on the record. [Laughter.]

Like other Government information, NTIS products cannot be copyrighted. Are you observing people reproducing and reselling NTIS information at a lower price?

Dr. CLARK. Yes. And frankly, we're encouraging that. We think that since the information is not copyrighted—in the first place, there's nothing wrong with it—our annual sales revenue for the last year was approximately $25 million, round numbers. We estimate that private companies made an additional $15 million from the resale, repackaging of our information, sometimes at considerably higher prices than we sold it to them.

Mr. WISE. How is this affecting your operations, or does it have an impact?

Dr. CLARK. Certainly, it does. I think if we were a private, let's say for-profit, or conceivably not-for-profit, company, where we would either have a profit motive or a revenue maximization motive, neither of which we currently have, we would look at those people as competition. We simply don't look at those people as competition; we look at them as aides to achieving our mission of getting the maximum dissemination of the information.

Mr. WISE. Turning to Mr. Armstrong, you were invited to testify today in part because you perform a library-like function. You're sort of neither fish nor fowl in some cases. You collect information from agencies and make it available to others. Now, first of all, let me ask, before we go further, is that a fair premise, a fair description of your activities?

Mr. ARMSTRONG. Well, Mr. Chairman, it's fair in the sense of the function we perform vis-a-vis agency information which is not otherwise available. Most of the information that we disseminate—for example, on a typical document set on a typical subject—less than 10 percent of it is information that we've sought under the Freedom of Information Act. A little more than 50 percent is information which was never received under the Freedom of Information Act, and about 40 percent is information that was received under the Freedom of Information Act by other individuals. So, with that in mind, yes.

Mr. WISE. Do you feel that your organization helps the Government carry out a public information function, and do you have any examples of that?

Mr. ARMSTRONG. Well, I think the best examples we can give you are the number of Government agencies that refer their personnel to us for their information: the State Department; every living Director of the Central Intelligence Agency. A former Director of the Central Intelligence Agency has been in, or the author of his autobiography has been in to use our materials from the Central Intelligence Agency, period. In other words, it's easier to get it from us than from them.

Defense Department people use us regularly. A number of ambassadors who are writing their memoirs use us rather than going back to the agency, and so forth.

Mr. WISE. Now, some have criticized the National Security Archive for making excessive use of the FOIA. I just wonder if you might have some response to that.

Mr. ARMSTRONG. Well, I think that one or two FOIA requests that we filed at the beginning probably constitute the first of the excessive uses from their point of view. I don't think it's a question of quantity or numbers. We have tried to pinpoint our requests, and therefore, they are relatively infrequent compared to the use we make of other people's Freedom of Information Act requests.

There were a couple of instances where we attempted—and we hope to do this in the future, although with I think somewhat better success—where we attempted to use the Government's own indexing system in order to retrieve records. We deal with research libraries all the time, scholars as well as journalists, and they're very concerned that the materials that we seek on particular subjects are not prejudiced by the kind of requests that we file.

For example, material relating to the departure of President Somoza from Nicaragua, we requested things relating to certain negotiations and so forth, and got a partial picture. It really was an incomplete picture.

So we went back, and we asked for all the State Department cables to and from Managua during a particular period using the electronic tags that are put on those cables, so that electronically, all that information could be run off instantaneously.

That was, in fact, a larger request we would normally file. It turned out to involve as many as 10,000 cables; much larger than what we would normally—we seek one or two, or half a dozen, or a dozen cables.

However, on the other hand, it allowed for a systematic declassification in that area of material that was as objectively sought as it possibly could be. We used the same criteria that the Department itself used for tagging that material, and we accommodated them by allowing them a greater—we had to go to court to get the material at all because they didn't recognize this as properly described material under the Freedom of Information Act. They said we hadn't specified the subject matter, even though we used their subject matter tags. But once we had clarified that in front of a Federal district court, we arrived at an accommodation, so they're processing material over a period of years rather than months, which, in our practice, is relatively soon.

Mr. WISE. Now, there is also a problem you're having with the way fees are assessed. As I understand it, there's a differential treatment. Different Government agencies treat the archive in different ways for the purposes of assessing fees. Have you tried to resolve this issue by raising it with the Justice Department?

Mr. ARMSTRONG. We are in the process of reraising it with the Justice Department, which we have done on a number of occasions, and hope that with the new administration and some new thinking of the Justice Department, we may be successful there.

We also have reraised it with some of the agencies where there has been some change in personnel, and we are not already in court. The State Department is a good example, and we hope for a resolution there.

I think the problem has been that this was a decision made to block access, and what we found in the State Department, which I think is probably the best example we can give, is that it's not just us; it's virtually anyone who's writing a book; many people who write for the daily press. Even though they write it on Washington Post/New York Times letterhead, they're sent back a questionnaire and asked to give 15 pages of explanation about why they would qualify as a news media representative.

So, I think that the intent to use it as a way of blocking access has been clear in the past, and we hope that that'll be relieved by some new thinking in those departments.

Mr. WISE. Speaking of the Justice Department, how do you assess their overall role in the last 8 years in carrying out FOIA?

Mr. ARMSTRONG. I think the Justice Department's role up to this point, in the previous administration, was quite tragic. They attempted and successfully were able to coordinate Governmentwide a policy, against the wishes, I might add, of most of the career Government bureaucracy.

There are many dedicated access professionals out there that want to help citizens get information. They essentially went out and said, "We will help you block access if you would like to."

Under the Carter administration, the Attorney General had ruled that the Justice Department would not represent any agency in court unless they saw a clearly defensible reason for blocking access to that material. They wanted it to be clear that there was a Government interest in that material, and not simply just a bureaucratic whim.

In this past administration, that policy, that standard, was inverted to the point where the Justice Department spends a good portion of its resources defending Government agencies and Freedom of Information Act suits.

Mr. **Wise**. What do you see now with the new administration?

Mr. **Armstrong**. It's our hope that that policy will change dramatically as the Office of Information is brought into the Deputy Attorney General's office, and that the Deputy Attorney General and the Attorney General, I think, have different thoughts, are more inclined to understand the public policy side of the Freedom of Information Act; that this is truly the only way that citizens can get access to the inner-workings of the Government and participate in the democratic process.

Mr. **Wise**. You mentioned in your testimony and remarks several times the State Department, and as you know, this subcommittee recently released a report showing that the State Department was probably one of the worst offenders in dealing with FOIA. I just wondered whether you detected any signs of improvement at the State Department over the past few months.

Mr. **Armstrong**. We certainly detected a reaction from the focus that this committee and the Senate have both given the State Department. I think your report in particular caused some consternation. We were told that the Secretary of State had gone back into the bureaucracy and essentially said that he wasn't sure what the Freedom of Information Act was but he didn't want to ever hear about it on Capitol Hill again.

I think that is the position that has come down. That is not a solution to the problem. It is perhaps the first step in a solution to the problem, and I think that your continued oversight and attention to it is likely to make material more accessible. It is not just the Freedom of Information Act that is the problem in the State Department, I should note; it is access to materials in general.

The State Department daily briefing on a daily basis is not then made accessible to individuals or reporters or anyone without going back through an elaborate bureaucracy. Private citizens cannot get access to what are supposedly public briefings without using the Freedom of Information Act. That seems to me to undermine the purposes of the act, which were to make accessible those things that were buried in the bureaucracy, not necessarily to hide things that were public statements or that were essentially put out on the public record, that make it necessary to spend 2 years waiting for access to a press briefing from a couple weeks ago.

Let's talk about that for a second. That is to me one of the more frustrating things about FOIA right now, is differential enforcement of it among agencies. You have been in this for a good period of time. Yes, the subcommittee can focus on an agency. You can ask GAO to make a report. You can go in and bang them, but that is one agency. So you hit the State Department. What have you done with Justice? What have you done with EPA? What have you done with any one of the many hundreds of them?

Do you have any suggestions on how to try to get away from the one-at-a-time approach?

Mr. **Armstrong**. I think there are two, and I think Tom probably has some others. First of all, I think the Department of Justice has played an important role, and I think the Department of Justice is a good place to focus those concerns. They have been successful in getting the word out when there are adverse rulings or other things that have essentially—well, blocked citizens' access, but they have also been willing to put the word out when there are things that have increased citizen access.

The second thing, though, I think that comes through, and I would encourage you to do some more one on one's—I recognize how frustrating they are and how limited your time can be to give them, but it has an effect beyond that initial agency. It puts out the word, I think, that access to information and access to information in a democracy is really the currency of that democracy, that that information is important beyond simply some rights granted under statute. It is right at the center of the democratic process.

Once attitudes change in an agency and change at a high level, we have seen some remarkable access. In the Defense Department prior to 1981, it changed in the middle of the first year of the Reagan administration. The rule of thumb was if any citizen, but certainly any reporter asked for any information of the press office, they were to get it for them just as if it was a Freedom of Information Act request, but get it for them promptly and not require them to file the request.

That system worked remarkably. Here is a department that spends hundreds of millions of dollars on the feed and caring and molding and shaping of public opinion through the press, and they were willing to spend some of that money on actually answering the questions that were being put to them. In 1981, they turned that policy around and went the other direction, so anyone doing systematic reporting on a subject was forced to then use the Freedom of Information Act.

I think, though, you can reinforce that attitude, that the attitude toward public access to information is what you are trying to promote, and the letter of the law is the minimum but not the maximum of what the Freedom of Information Act requires.

Mr. BLANTON. I would just add to it that you see your actions taking on a specific agency in isolation, but to those of us who are down in the bowels of the FOIA process out there, you yell in one cave entrance, but the echoes go in all kinds of mine shafts down there. We get the reaction back from a lot of people that they just know you are watching. It makes a big difference, and that sort of percolation down is very important.

The second step that I think could be done by the subcommittee is that you have already produced an excellent citizens' guide to the FOIA. One of the ideas that I think people are talking about now is maybe there is a need to do a bureaucrat's guide to the FOIA. One of the problems we have had with the Justice Department is they filled the vacuum of specific hands-on advice to the bureaucrats who are implementing the FOIA; that if Congress took a whack at doing the same thing and embodying its own intent in a report of the subcommittee, report of the full committee, we would certainly love to have those reports.

They are useful in litigation. Courts pay attention to them. They are real clear in terms of intent, and bureaucrats will pay attention to them. If you provide some specific guidance for dealing with a specific fee category or a specific processing problem, that is going to help a lot.

The third idea, I think, is maybe to get into a little bit of the training business. At CRS you have some tremendous resources on the information policy side, Harold Relyea and other folks. There is an extraordinary institutional memory, and there may be some role for Congress to actually host a couple of sessions along the lines of what the American Association of Access Professionals does in terms of training for FOIA bureaucrats.

That is a good way to just show congressional intent in a broad forum that reaches the people who are actually doing the hands-on work.

Mr. WISE. Good suggestions. Also I might add anyone who, in speaking to a Member from West Virginia, refers to a coal mining analogy, certainly has researched the committee well. [Laughter.]

I want to thank you very much. I suspect that you would trade me a lot right now to be able to have all that on this one disk that you could hold with you.

Mr. BLANTON. You bet. We tried to get Apple Computer to essentially do that and turn it back into the data base that it once was, but there are some real problems with the scanning technology. It is still not what we would all love it to be, but you can imagine that would essentially fit on just a couple of floppy disks. It is not a lot of data but it is extraordinarily unusable for any researcher.

Mr. WISE. I want to thank everyone who has appeared. This is the second in a series of hearings and we will be conducting others into the status of the Freedom of Information Act and the overall issue of dissemination of information and how we can do it more effectively. There have been a lot of good ideas put forward together.

For some of you, I will be submitting questions to in writing. We will leave the record open for at least 2 weeks to get your response, and I appreciate your participation and declare this hearing adjourned.

Thank you.

[Whereupon, at 12:55 p.m. the subcommittee adjourned, to reconvene subject to the call of the Chair.]

FEDERAL INFORMATION DISSEMINATION POLICIES AND PRACTICES

TUESDAY, JULY 11, 1989

House of Representatives,
Government Information,
Justice, and Agriculture Subcommittee
of the Committee on Government Operations,
Washington, DC.

The subcommittee met, pursuant to notice, at 9:30 a.m., in room 2247, Rayburn House Office Building, Hon. Robert E. Wise, Jr. (chairman of the subcommittee) presiding.

Present: Representatives Robert E. Wise, Jr., Glenn English, and Al McCandless.

Also present: Lee Godown, staff director; Robert Gellman, chief counsel; Susan Chadderdon, clerk; Reid Harward, staff assistant; and Brian Lockwood, minority professional staff, Committee on Government Operations.

Mr. Wise. This hearing will come to order.

This is the third in the subcommittee's series of hearings on Federal information dissemination policies and practices. At our first two hearings, we received testimony from Federal agencies, public interest groups, librarians, and the private sector.

Today, we will begin with several witnesses who will discuss the effect of electronic information technology on the Freedom of Information Act. Representative Jerry Kleczka—one of the leading supporters of the FOIA in the House—will testify about a bill that he recently introduced.

We will also hear more about how Government dissemination policies are affecting private sector information companies. Finally, the Government Printing Office—one of the principal Federal information dissemination agencies—will testify about how it is adjusting to new technologies and new policies.

All statements in their entirety will be made a part of the record so witnesses should please feel free to summarize.

I am happy to welcome Jerry Kleczka of Wisconsin. Jerry is an active member of the Government Operations Committee and has been a leading voice in the treating of Government information. Jerry, I am glad to be able to join you on the legislation you have introduced.

STATEMENT OF HON. GERALD D. KLECZKA, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF WISCONSIN

Mr. **Kleczka**. Thank you, Chairman Wise. I am very pleased to have this opportunity to testify this morning on Federal information dissemination policies and practices, particularly relating to the Freedom of Information Act [FOIA].

As a Member of Congress who has long been interested in FOIA, I would like to commend Chairman Wise, ranking minority member, McCandless, the other members of the subcommittee, and the subcommittee staff for holding this excellent series of hearings on this critical open government issue.

Since I was first elected to serve in the House of Representatives, public access to Government information has been one of my foremost legislative objectives. In both the 99th and 100th Congresses, I worked closely with the Society of Professional Journalists and other FOIA advocates to develop progressively broader legislation to strengthen FOIA.

Just 2 weeks ago, on June 28, I introduced H.R. 2773, the Freedom of Information Public Improvements Act of 1989.

In large part, H.R. 2773 is similar to my two previous FOIA reform bills with the major exception of how it treats electronic information. In this area, which I call FOIA's "New Electronic Frontier," this year's legislation breaks significant new ground.

Specifically, H.R. 2773, redefines Government records for FOIA purposes as covering all "computerized, digitized, and electronic information." This change is needed because some Federal agencies have declared, and some courts have agreed with them, that Government computer records are not covered by FOIA.

Similarly, the measure defines a Government records search as including "a reasonable amount of computer programming necessary to identify records." This revision is needed because some agencies hold that computer programming—which is required to retrieve computer records—constitutes record creation, an effort FOIA does not mandate.

I recognize that FOIA operations, particularly computer programming, can place a financial and personnel burden on Federal agencies. However, the appropriate response here is to meet the FOIA challenge with greater financial resources and innovative measures, not to restrict access to computer records.

It is my understanding that these revisions complement H.R. 2381, the Information Policy Act introduced by you, Mr. Chairman, Bob Wise. Both bills would improve public dissemination of appropriate Government information in light of electronic technology advances.

After reviewing recent developments regarding FOIA treatment of electronic records, it became obvious that any meaningful, comprehensive reform of the act must address the increasingly important electronic aspect of the freedom of information issue.

Recent literature on electronic FOIA issues points to the need for a clarification of the FOIA status of these records.

House Report 99-560, a 99th Congress report approved by the Government Operations Committee based on a study completed by this subcommittee, agreed that this reform effort was needed.

The report, entitled "Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview," found that:

> Legal ambiguities, practical limitations, and economic constraints may allow federal agencies to restrict unduly the public availability of government data maintained electronically.

This excellent report recommended that "agencies use the new information technology to broaden and improve public use of government information," not to restrict it. Let me add my voice in urging this approach to our all too secretive agencies.

Last October, the Office of Technology Assessment issued a study which drew the identical conclusion that FOIA must be amended to deal with advances in computer and other information technology. The report noted that the original intent of FOIA could be undermined if Congress does not act to modernize its provisions.

This 333 page report, entitled "Informing the Nation: Federal Information Dissemination in an Electronic Age," concluded that "if Congress wishes to maintain the integrity of FOIA in an electronic environment, the goals of the statute should be reassessed, and statutory amendment pursued."

On June 18, the New York Times printed an article titled, "Computers Challenge Freedom of Information Act." This article featured accounts of FOIA requesters who were frustrated by the lack of explicit guidelines on Government computer records and the erratic FOIA treatment of these records by Federal agencies.

The article also pointed to a strong precedent for updating FOIA by noting how progress in wiretapping and electronic surveillance technology led to the passage of the Electronic Communications Privacy Act of 1986, a law which expanded privacy protections. Mr. Chairman, I request unanimous consent to place this informative article in the hearing record.

Mr. WISE. Without objection.

[The article follows:]

THE NEW YORK TIMES, SUNDAY, JUNE 18, 1989

Computers Challenge Freedom of Information Act

By JOHN MARKOFF

With the Government's continuing shift to storing information in computers, the public faces new obstacles when seeking access to Federal documents, a growing number of legal scholars and lawyers say.

These experts and some public interest groups say the creation of vast storehouses of electronic data is undermining the original intent of the Freedom of Information Act, which does not mention computer records. Their main argument is that a lack of adequate guidelines about computerized information allows Government officials too much latitude in responding to requests for information.

Computerization has even raised disputes about what constitutes a Federal record. That is an issue in a lawsuit three public interest groups brought under the Freedom of Information Act in January. The groups obtained a temporary restraining order that prevented the Bush White House from erasing the Reagan Administration's electronic messages on the computerized mail system used by the White House and the National Security Council. Government attorneys argued that these messages "do not rise" to the level of being Government records.

'No Man's Land' of Information

Alan Westin, a computer expert at Columbia University, says the problem is that the Government's expanded use of computers in the last two decades has leapfrogged laws intended for a world in which all Federal records were on paper. Now with data bases, electronically stored information can be instantaneously sorted and retrieved, or even destroyed, with just a few strokes on a computer keyboard.

"It's as if you've created a great no man's land of information," said Mr. Westin, who has studied whether computer technology has thwarted the information act. "Traditionally, thinking has been in terms of paper environments and without any sophistication about electronic information."

Since the information act became law in 1966, it has been extensively used by reporters, public interest groups and corporations to obtain a wide range of information, including data on polluters, arms sales to foreign governments and the activities of business competitors. A Congressional committee estimates that as many as 300,000 requests are filed each year under the act.

The Freedom of Information Act was last revised significantly in 1974, before agencies moved strongly toward computerization. The Government is now spending an estimated $15 billion a year on computer equipment.

No Explicit Guidelines

There are no explicit legal guidelines that agencies must follow when programming their computers to extract information asked for under the act. Nor are there guidelines on the form in which agencies must release the data. Some legal experts argue that unless issues involving computerized records can be resolved by the courts or by new laws, the lack of guidelines will become a common way for agencies to deny requests.

Several agencies have become concerned about electronic records issues. In May the Department of Justice's Office of Information and Privacy noted in a survey sent to Federal agencies that questions about records on computers "stand as largely unresolved questions of law."

Richard L. Huff, a director of the agency, which sets Government policy on Freedom of Information and privacy issues, said: "The interesting questions deal with whether you have to do computer programming to search for information. The concern is how much the Federal Government should spend on programmers."

Action in Congress

Congress, meanwhile, is beginning to act on issues involving computerized information. Last month, Representative Bob Wise, Democrat of West Virginia, introduced a bill that would extend the Freedom of Information Act into electronic areas and create a more uniform Federal policy.

The gray area of computer information has raised thorny questions in several recent cases, including the one involving the White House's computerized mail system.

The system helped Congressional investigators to reconstruct the events that led to the Iran-contra scandal. But the White House decided not to save the messages, stored on computer tapes, either for the Reagan Presidential library or as records at the National Archives.

The White House took the position that executive staff members must print out any significant documents and that only those paper documents were to be considered records. The case is still before a Federal District Court in Washington.

5,000-Page C.I.A. Printout

Another concern is that officials might undermine the intent of the information act by releasing huge volumes of paper records, effectively hiding information that could be instantly found if the records were released in the form of computer files.

Last year, for example, the National Security Archives, a Washington research library, requested an index of previously released records of the Central Intelligence Agency. In complying with the request, the agency gave the archives a 3-and-a-half-foot-high, 5,000-page computer printout with the records arranged by date of release.

The library filed an appeal, arguing that the information was less useful than if it had been made available on computer tape or disk. But last July a Federal judge supported the C.I.A.'s position that the information was in "reasonably accessible form."

In another recent case, an academic researcher filed a request with the Federal Reserve Board to obtain the software it uses to monitor the nation's money supply, aiding in decisions on when to inject money into the economy. The request was denied on the ground that the software represents the board's internal deliberative process and is thus exempt from disclosure. An appeal has been filed.

Are computer files records? The Government says no.

Need for Change Debated

Whether the Freedom of Information Act must be overhauled has become the subject of growing debate among lawyers and public interest groups.

Many people with experience in litigation under the act argue that it was written so broadly that it does not require revision. These people contend that courts have generally supported liberal interpretations of the law in the face of attempts by Federal agencies to restrict access. And they express concern that tampering with the original act will reduce access.

But a growing number of lawyers and public interest representatives say the shift to computers has created challenges never considered by those who wrote the act and revised it.

"The original F.O.I.A. statute was not drafted with new technologies in mind," said David Johnson, a Washington attorney who specializes in computer law at Wilmer, Cutler, Pickering. "This is true with a large number of statutes. Developing technology places pressure on unexpected portions of the law and requires that the courts interpret the statutes."

Mr. Johnson noted that advances in the technology used in wiretapping and electronic surveillance created a similar situation and ultimately led to the Electronic Communications Privacy Act of 1986, which extended the scope of previous privacy statutes.

The information act requires Federal agencies to make a "reasonable effort" to comply with the public's requests for information, except in areas that might compromise national security or infringe on individuals' privacy. At the heart of the dispute is how the computerization of records may have subtly changed the definition of what is a reasonable search.

It is now possible to do with several keystrokes what would have once taken months or years of manual sorting and searching through files. Current case law as applied to paper information, however, establishes that it is not necessary for agencies to create new records in meeting requests.

Role of Programming

In responding to requests for information, some agencies have held that if computer programming is required, the result constitutes a new record. Since the creation of new records is not required under the law, programming would not be either, if this position is upheld.

The Congressional Office of Technology Assessment, in a study on Government dissemination of information in the computer age, stated that electronic information had raised a number of fundamental questions about the basic purposes of the act.

Jerry Berman, director of the American Civil Liberties Union's information technology project, has suggested that an "electronic freedom of information act" may be needed.

"We have to make the Government focus on this," Mr. Berman said. "A policy is needed where electronic information is mandated as part of the dissemination of information, and we need to view technology in general as a means for making Government more accessible to citizens."

Mr. KLECZKA. Apart from its electronic record focus, H.R. 2773 has four other FOIA strengthening provisions regarding time delays, exemptions, fee waivers, and standardization and openness in the FOIA process.

With regard to time delays, my legislation would establish a system of financial penalties against agencies failing to comply with legal deadlines, and would broaden disciplinary sanctions against employees who deliberately obstruct requests. This provision also would require expedited access procedures when circumstances demand urgent disclosures.

My freedom of information public improvements bill would revise exemptions to FOIA for national security, internal personnel, and financial institution records.

The national security exemption would be revised to balance between the security need to protect information and the public need to disclose it. Currently, I believe that too much nonsensitive Government information is being unnecessarily withheld on national security grounds.

The exemption for internal agency rules and practices would be revised to exempt only law enforcement manuals whose disclosure would significantly risk circumventing an agency investigation, a regulation or a statute.

The financial institution exemption would be sharply tightened to protect only the release of information that "would directly injure the financial stability of an institution."

There has been a great deal of interest in this particular exemption on the part of public interest groups, financial institutions and their lobbyists. At a Government Operations Legislation Subcommittee hearing last month, our good friend and colleague, Chairman John Conyers, as well as others, proposed various revisions to this exemption.

The suggested changes range from outright repeal to exceedingly detailed language specifying exactly what financial information could be withheld. Many of these alternatives, including my provision, strive for the same goal: Prevention of financial wrongdoing and redlining. The exact language amending this exemption is not as important to me as actually achieving our common objective.

On the subject of fee waivers, H.R. 2773 makes it easier for requesters to qualify for reduced fees by clarifying fee waiver language enacted into law by the 1986 omnibus anti-drug bill.

This provision also broadens the categories of those eligible for the reduced fees to include individuals and nonprofit organizations.

Finally, the Freedom of Information Public Improvements Act increases standardization and openness in the FOIA process by requiring that agencies maintain logs of FOIA requests and responses, organize their recordkeeping systems to promote inexpensive and easy access, and make public any special queuing procedures in processing requests.

After consultation with FOIA users and careful consideration of past FOIA performance by the Justice Department, this legislation vests FOIA oversight powers within the Office of the Archivist of the United States. Although the Archivist is not one of our most prominent Federal officials, I believe that this position is the one most likely to provide independent and impartial supervision of FOIA.

I am confident that taken as a whole, these amendments to FOIA will strengthen this landmark open government law and increase public access to Government information.

Over the past 23 years, the public has benefited from FOIA in countless ways, including exposures of wasteful Government spending, consumer health risks, and abuses of power by the Central Intelligence Agency and the Federal Bureau of Investigation.

The bulk of FOIA requests, though less spectacular, have enabled journalists, scholars and others to build a solid public accounting of Government's activities.

Now that FOIA has been in force for over 20 years, it is clear that it has fulfilled many of the public information goals Congress intended when it first approved this legislation.

Still, we can, and must, work to overcome the law's various shortcomings and to meet the complex challenges of adapting FOIA to the ever advancing electronic age.

I hope that my legislation will contribute to this reform process by stimulating further discussion and action to promote the greatest possible public access to Government information which, after all, has been collected at the taxpayers' expense.

Mr. Chairman, I would be pleased to answer any questions the subcommittee may have.

Mr. WISE. Thank you very much.

It still appears to be true that the biggest FOIA problems with the press relate to the processing of requests. That seems to be the bulk of the complaints I receive. Is that your view?

Mr. KLECZKA. I think the biggest problem is the delay problem. I remember working with Professor Harris who experienced severe time delays in requesting information for a book he was writing on J. Edgar Hoover. He experienced the delays from the FBI. I have an example that involves an October 1988 request by Joan Lowry, the Rocky Mountain News reporter in Washington, DC. She filed a request for the Department of Energy for travel vouchers for former Secretary Herrington. She asked for a fee waiver. The Department responded that the request was too broad and it would cost her newspaper $1 million to fulfill the request. The request for fee waiver was denied because the same information had been released to another news organization.

When she asked them to identify them, they said it had not yet been released. To monitor the status of her request, whenever she called, she was told the agency was working on it.

Yesterday, 9 months after the request, she finally received the information in the form of a 1½ inch document. She learned the agency compiled it 2 months ago for the other organization. This is the type of information I received in my office. I am sure the chairman receives similar types of information.

So delays continue to be a problem in response to FOIA requests.

Mr. WISE. It seems to me she frustrated them because she was willing to keep on after pursuing the request. Because of time constraints, sometimes the story is no longer timely. It seems like much needs to be done on that.

You talked some about electronic recordkeeping. How urgent do you think is the need for legislation to deal with this? There are two schools of thought, both of which are being presented today. One is that existing law can solve the problems, along with Supreme Court decisions, to come. That is a wild card, particularly with this Court. The other view is that Congress needs to act and recognize there is a new age. What is your point of view?

Mr. KLECZKA. Yes. There are two schools of thought. Since there is a great ambiguity here, your bill does address this new problem facing FOIA. My bill also addresses it. Basically, we have to clarify not only for requesters but also for the court that electronic records should be the equivalent to paper records.

Mr. WISE. Also another area I know that is close to your heart is exemption 8, covering bank information. We had some discussions on this when the S&L bill was before the Banking Committee. Since you are also a member of the Banking Committee, I wonder if you can offer an assessment on the policies and whether it is something we chose to pursue in the Government Operations Committee and whether there is support in the Banking Committee.

Mr. KLECZKA. Bankers oppose it, requesters support it. Basically, there has been some talk by our full committee chairman, John Conyers, on opening up more of the banking records to amend exemption 8. My basic feeling is that depositors have a right to know whether or not the institution they are dealing with is safe and sound.

The conference committee on the S&L crisis is meeting this afternoon. One of the items it will be discussing is an amendment by Congressman Kennedy requiring disclosure of Community Reinvestment Act ratings. I think that is a good start.

I think exemption 8 should be looked at, possibly amended. We have not broached the full Banking Committee on this issue. If we can get our colleagues on Government Operations in agreement with some language, I would be willing to approach the full Banking Committee and whatever the vehicle might be, try possibly to amend legislation coming before that committee. I think exemption 8 should be opened up basically for the reason that depositors have the right to know the financial status of the institution they are dealing with.

Mr. WISE. I agree with you. My feeling—as you will recall you and I were discussing this—is that there was a reluctance to undertake this question in the fast moving days when the S&L bill was before the Government Operations Committee, and this was probably not the the place to bring something as far reaching.

However, there is a lot of interest in the Government Operations Committee in looking at this in a more deliberate way and hopefully looking for another vehicle to move this legislation. So I look forward to working with you on that.

Mr. KLECZKA. Thank you.

Mr. WISE. I want to thank you very much for appearing and also for the time that you invested.

Mr. KLECZKA. I thank you for inviting me here today to testify before your subcommittee. I look forward to possibly working further on your legislative product and mine and possibly bringing the bill to the floor.

Mr. **Wise**. My hope is that at some point we get everybody around the table who has been testifying and see what we can work out.

The next panel will be Patti Goldman with the Public Citizen Litigation Center, Ronald Plesser with Piper & Marbury, and William Dobrovir with Dobrovir & Gephardt.

It is the custom of this subcommittee to swear all witnesses in so as not to prejudice all witnesses. Does anybody have any objection?

[Witnesses sworn.]

Mr. **Wise**. As I remarked, your written statements will be made a part of the hearing record in their entirety. I would ask if you could summarize. We will begin with Ms. Goldman.

STATEMENT OF PATTI A. GOLDMAN, PUBLIC CITIZEN LITIGATION CENTER

Ms. **Goldman**. On behalf of Public Citizen, I want to thank you for the opportunity to testify today. I will devote my remarks to the applicability of the Freedom of Information Act to electronic information which I agree is one of the most important issues that is coming up today with the act.

Based on my experience as a practitioner working with requesters who are seeking access to Government information and challenging agency claims, I have a different assessment of the problems and the solutions in this area. In my view the problems do not stem from the act itself. The act has very workable standards that can insure public access to electronic information to the same extent as paper records are made available under the act. The problem is not with the standards but with the way agencies have applied them and the agencies lack of familiarity with those standards and how they apply to the computer records.

Because of that assessment, the solution, in my view, is not amending the act. A rush to amend the act I think is both unnecessary and unwise. It is unnecessary because I cannot imagine we can come up with better standards that could apply in the long run to gaining access to a wide range of electronic information and unwise because we might end up with something worse if we spell out particular standards that don't allow the same flexibility that we now have.

There are several problems that have come up. In each of them the source of the problem has been a reluctance to apply the act or misunderstanding. Let me give some examples. The first issue has been are electronic records covered by the act? The answer to that question comes from the term "agency records." That is the definition of what is covered. There is no limiting principal in that term that eliminates electronic records at all. Instead, in a recent case that came out of the Supreme Court, that court said machine-readable records are covered. There has never been a contrary rule that has flatly excluded computer records. Any language to that effect has been narrowly tailored to a specific issue before the Court.

That issue is a nonissue but is something that some agencies have said when they first faced a computer request, when they are basically throwing up their hands and saying what does this mean? On reflection, those records are made available.

The same is true with the search obligation. Under the act the agencies must conduct a reasonable search. Some agencies have tried to deviate from that standard and adopt a hard and fast rule that computer programming is not a reasonable search. If computer programming is required, the argument is, that request is not covered by the act. That argument has no basis in the act. There is no computer programming exemption. Where it comes from is that the act requires records that exist to be made available. It does not require agencies to create new records.

The argument is that computer programming is the creation of a new record and is not required. But that is taking the creation of a record idea far too far. A lot of this requested data exists. Much of it is available in paper form but is put on the computer for ease. The courts have looked at the reasonableness of a search. That is the standard that applies. In the computer programming context the questions would be: Is that programming reasonable; is it so burdensome, cost and resource intensive that the agency should not be required to do it?

In the paper record context there are examples of requests that are so burdensome that the request is unreasonable and therefore not required. That is also a more workable computer record standard both for requesters and also the agencies because computer programming could be very simple or it could be very intensive. The term "computer programming" doesn't mean a certain amount of effort. The same is true for the segregation duty. Agencies must excise information that is exempt and produce the remaining portions of the document. A reasonableness standard also applies to this duty. There are several court cases which have adopted that standard and have applied it in the process of computer records. Redaction is required where it is not so burdensome that it amounts to a tremendous effort and creation of an entirely new document. But where it is so intensive that it is basically manipulating data and coming up with something completely different, it is not required. That is a very workable standard. In all of these respects I think the standards that we have are very workable and can insure public access to computer information to the same extent that they ensure access to paper records.

Because of that I think it would be premature to amend the act and instead it would be much better for this committee and the public generally to maintain vigilant oversight of the agencies' application of the act. Through this oversight there can be a public information process so that agencies become more familiar with what is expected of them under the act and hopefully we can come to a consensus of what these standards mean so that they are applied in a way that will assure a wide range of access to Government records.

Mr. WISE. Part of the power of legislators is not to legislate. This is going to be an interesting panel. Thank you.

[The prepared statement of Ms. Goldman follows:]

THE FREEDOM OF INFORMATION ACT APPLIES FULLY TO ELECTRONIC RECORDS

Testimony of Patti A. Goldman, Public Citizen
Before Government Information, Justice, and Agriculture
Subcommittee, House Committee on Government Operations

July 11, 1989

Since the Freedom of Information Act was enacted in 1966, the federal government has dramatically increased its use of computers to store and retrieve government records. Computerization of government records can have numerous positive effects on public access to information in the hands of the federal government. It increases the government's capacity to store information in ways that are useful to the public. It facilitates faster retrieval of information as well as the retrieval of information in formats that are of interest to the public. It enhances the availability of information by recording official agency communications that previously would have taken place over the telephone or in person. In all of these ways, the advent of the electronic age can be a boon to the public's ability to obtain and make use of government information by increasing the availability of information, accelerating its retrieval, and facilitating the location of information in the vast stores of government records.

In practice, however, this has not always been the case. Some commentators have been quick to fault the Freedom of Information Act for any difficulties experienced in gaining access to computer information. See, e.g., J. Berman, Communications Policy and the Public's Right to Know: Public Access to Electronic Public Information 12-17 (1989); Office of

Technology Assessment, Informing the Nation: Federal Information Dissemination in an Electronic Age 19-20, 207-08 (1988). They and others argue that the only remedy is to amend the Freedom of Information Act to ensure that it applies fully to electronic information.

On closer review, however, this assignment of blame is misplaced, and the rush to amend the Act is premature. The standards of the Act can be applied to electronic information in a logical manner that facilitates public access to computer records. Thus, the difficulties experienced in applying the Freedom of Information Act to electronic records have resulted not from inherent limitations in the Act itself, but in agencies' reluctance to apply the Act's principles to electronic information in a manner that ensures public access. Indeed, after initial resistance to making electronic records available under FOIA, many agencies have finally begun to apply its standards to this important source of government information.

What is needed, therefore, is not a complete revamping of the Freedom of Information Act to reach computer records. Instead, both the public and federal agencies need to have a better understanding of how the well-established principles embodied in the FOIA apply to electronic information.

The Administrative Conference of the United States ("ACUS") recently adopted recommendations urging agencies to interpret the Freedom of Information Act to cover electronic information, to avoid frustrating the purposes of the Act by raising the defenses discussed in this testimony, and to apply the concept of reasonableness in resolving controversies over the application of the FOIA to electronic records. Recommendation 88-10: Federal Agency Use of Computers in Acquiring and Releasing Information, in ACUS, Recommendations and Reports, at 50-51 (1988); accord H. Perritt, Electronic Acquisition and Release of Federal Agency Information: Report to the Administrative Conference of the United States, in id. at 601, 609-10 (1988). The approach advocated by ACUS is entirely consistent with the FOIA and can be fully implemented without without any changes in the statute. Accordingly, at this stage in the development of electronic information systems, it would be far more prudent to shape agencies' practices in applying the FOIA to such information rather than to revise the FOIA's principles.

A. Significance of FOIA Applicability.

Most issues concerning the application of the FOIA to electronic information involve whether a particular request for information falls under the Act at all. Three significant consequences flow from the answer to this question. First, federal agencies must disclose information in response to requests that are covered by the Act, unless the information falls within one of the Act's nine exemptions. In other words, requests for information that is covered by the FOIA trigger an agency's mandatory disclosure obligations, while an agency generally has unfettered discretion to decide whether to disclose information that is not subject to the Act.

Second, and related to the first, FOIA requesters may seek judicial review of an agency's refusal to produce information. In any such challenge, the agency bears the burden of proving that the information is exempt from disclosure, and the courts must make a de novo determination of the matter. 5 U.S.C. § 552(a)(4)(B). Accordingly, where an agency refuses to disclose a record that is covered by the FOIA, a dissatisfied requester can bring a lawsuit to enforce the Act's disclosure standards. On the other hand, where the FOIA does not apply, the agency has no obligation to abide by such standards and may choose not to produce the requested information, with little or no recourse available to the requester.

Third, the Act establishes a fee structure, which restricts the fees that agencies may charge for the production of records, and provides for fee waivers for journalists, scholars, public interest organizations, and others who will use the information to increase the public's understanding about government activities. If information is not covered by the Act, this fee structure would not apply, Indeed, disputes often arise when an agency tries to charge requesters the costs of producing electronic information that exceed those recoverable under the FOIA.

B. Issues Concerning Application of the FOIA to Electronic Information.

Most of the disputes that have arisen over the application of the FOIA to electronic information concern four FOIA standards: (1) the definition of "agency records," (2) the agency's search responsibilities, (3) the agency's duty to segregate and release nonexempt portions of a record, and (4) the agency's obligation to produce information in a particular form. The FOIA is inadequate to facilitate public access to electronic information only when agencies adopt an overly rigid view of the FOIA's standards. Rigid rules foreclosing access, however, are contrary to both the principles and purposes of the Act.

The FOIA establishes broad flexible principles that can be applied to computer records in a way that ensures access and minimizes the burden imposed on agencies. The FOIA itself contains no exclusion for electronic records, and there is no defensible basis for excluding such records from its coverage. Indeed, such an exclusion would run counter to the legislative history of the 1974 FOIA amendments, which stresses that an agency's obligations with respect to computer records are determined by way of analogy to the standards that apply to conventional records. S. Rep. No. 93-854, 93d Cong., 2d Sess. 12 (1974). These standards, as set forth in the Act and construed by the courts in the context of paper records, point to coverage of, and broad access to, computer records as well.

1. Electronic Records Meet FOIA's Agency Record Requirement.

The threshold coverage question is whether electronic records are records that are subject to the Freedom of Information Act at all. Although some commentators have made this an issue, *see*, *e.g.*, J. Berman, *supra* at 13, 14, there has never been any serious question about whether the Act applies to electronic information.

By its terms, FOIA applies to requests for "agency records." 5 U.S.C. § 552(a)(4)(B); *accord id*. 552(a)(3) ("records"). Although the Act supplies no definition of this term, the legislative history of the 1974 amendments makes it absolutely clear that Congress intended for the Act to apply to computer records. *See* S. Rep. No. 93-854, 93d Cong., 2d Sess. 12 (1974).

The courts have also construed the Act to cover electronic information. Most of the court cases concerning the scope of this term focus on whether an agency has possession and sufficient control over records to make them the records of an agency as opposed to those of some other entity that is not subject to the FOIA. *See*, *e.g.*, *Kissinger v. Reporters Committee for Freedom of the Press*, 445 U.S. 136 (1980); *Forsham v. Harris*, 445 U.S. 169 (1980). In this context, the Supreme Court has recently held that "control" means "that the materials have come into the agency's possession in the legitimate conduct of its official duties," which would surely encompass a wide range of electronic information. *Department of Justice v. Tax Analysts*, 57 U.S.L.W. 4925, 4927-28 (U.S. June 23, 1989).

When divorced from the term "agency, the term "records" has never been limited in any way as covering records in one medium but not another. Instead, the courts have adopted a definition that includes records in all forms, and the Supreme Court has looked to the federal Disposal of Records Act for guidance. *See* *Department of Justice v. Tax Analysts*, 57 U.S.L.W. at 4928; *Forsham v. Harris*, 445 U.S. 169, 186 (1980). That statute defines records to include "all books, papers, maps, photographs, machine readable materials, or other documentary materials, regardless of physical form or characteristics . . .." 44 U.S.C. § 3301.

In keeping with the purpose of the Act, and the absence of any limitation on the type of records that come within its term, courts that have considered the issue have concluded that computer records fall within the definition of "agency records." Thus, the D.C. Circuit concluded in *Yeager v. Drug Enforcement Administration*, 678 F.2d 315, 321 (1982), that "[i]t is thus clear that computer-stored records, whether stored in the central processing unit, on magnetic tape or in some other form, are still 'records' for purposes of the FOIA." Likewise, then-Judge (now-Justice) Kennedy stated in *Long v. IRS*, 596 F.2d 362, 364-65 (9th Cir. 1979), *cert. denied*, 446 U.S. 917 (1980),

> we dispose at the outset of any contention that computer tapes are not generally within the FOIA. The district court apparently determined that the term "records," as used in the Act, does not include computer tapes. This conclusion, however, is quite at odds with the purpose and history of the statute.. . . In view of the common, widespread use of computers by government agencies for information storage and processing, any interpretation of the FOIA which limits its application to conventional written documents contradicts the "general philosophy of full agency disclosure" which Congress intended to establish.

And the Northern District of California recently held that the Immigration and Naturalization Service must search all relevant electronic databases in response to a request for "all records" on a particular subject. Mayock v. INS, No. C-85-5169-CAL, slip op. at 18-19 (N.D. Cal. June 19, 1989). These judicial decisions are consistent with others that hold that the FOIA applies to audio tapes, motion pictures, video tapes, and similar materials. See, e.g., Save the Dolphins v. Department of Commerce, 404 F. Supp. 407, 411 (N.D. Cal. 1975) (motion picture).

In accordance with the case law, agencies rarely claim that computer records are not subject to the FOIA because they are in electronic form, and agency regulations that address the issue generally define "records" to include records in electronic form. See, e.g., 32 C.F.R. § 286.5(b)(1) (Department of Defense); 45 C.F.R. § 5.5 (Department of Health & Human Services).

The only arguments marshalled to the contrary stem from the misreading of one case and the position taken by the Department of Justice in another case that is currently pending. See SDC Development Corp. v. Mathews, 542 F.2d 1116 (9th Cir. 1976) and Armstrong v. Bush, No. 89-0142 (D.D.C.). First, some have argued that SDC Development Corp. v. Mathews, 542 F.2d 1116 (9th Cir. 1976), stands for the proposition that electronic records are not subject to the FOIA. In that case, the Ninth Circuit Court of Appeals in an opinion written by then-Judge Kennedy refused to allow a company to use the FOIA to obtain the Medical Literature Analysis and Retrieval database (MEDLARS) from the National Library of Medicine, which is made available to public users by way of a license agreement. The court reached this result not by excluding computer records from the FOIA, but by reading the FOIA in conjunction with the National Library of Medicine Act, which specifically authorizes charges for the requested materials that are greater than those recoverable under the FOIA. Thus, the ultimate issue in that case was not one of access but one of cost. As the court stated:

> Here the agency is not seeking to mask its processes or functions from public scrutiny. Indeed, its principal mission is the orderly dissemination of material it has collected. The agency is seeking to protect not its information, but rather its system of for delivering that information. Congress specifically mandated the agency to prepare this system and hold it as stock in trade for sale to the public. As such the system constitutes a highly valuable commodity. Requiring the agency to make its delivery system available to appellants at nominal charge would not enhance the information gathering and dissemination function of the agency, but rather would hamper it substantially.

542 F.2d at 1120.

To the extent that anything in that decision suggests that the term "record" excludes computerized records, it has been discredited by Judge Kennedy's subsequent ruling to the contrary in Long, which concludes that computer records are "records" subject to the FOIA and that SDC v. Mathews does not hold to the contrary. Thus, it is simply incorrect to cite SDC v. Mathews for the proposition that computer records are not covered by the FOIA. In addition, Congress has since codified the rule adopted in SDC v. Mathews in the 1986 amendments to the FOIA by stating that: "[n]othing in this subparagraph [setting forth the FOIA's fee and fee waiver provisions] shall supersede fees chargeable under a statute specifically providing for setting the level of fees for particular types of records." 5 U.S.C. § 552(a)(4)(A)(vi). Under this provision, the access provisions of the FOIA apply to such records, but the statutory fees supersede the FOIA's fee structure and fee waiver provisions.

Second, the recent dispute over access to what is commonly called "electronic mail" has been cited as support for the proposition that the FOIA must be amended to ensure that such information is subject to its disclosure requirements. That dispute arose at the close of the Reagan Administration when the National Security Council was preparing to destroy the back-up tapes for computer system that enables agency employees to communicate with each other through their computer terminals. This system, called the PROFS system, was the method used by Lt. Col. Oliver North to communicate the details of the Iran-Contra arms deals to former National Security Advisers Poindexter and McFarlane. See, e.g., Report of the Congressional Committees Investigating the Iran-Contra Affair at 110, 689 (Nov. 1987). The plaintiffs sued under the federal records preservation and access statutes claiming that such records cannot be destroyed until the Archivist of the United States has complied with the preservation requirements set forth in those statutes. Armstrong v. Bush, No. 89-0142 (D.D.C.). The Department of Justice has argued that the records are not subject to the preservation requirements, not because they are in electronic form, but because they are "transitory" and therefore akin to telephone conversations. Moreover, the district court has not yet ruled on the Department's claims. For these reasons, this case does not, at this juncture, call into question whether the FOIA covers electronic records as a general matter.

While it is clear that computer records are covered by the FOIA, some agencies have tried to carve out an exception for computer software. Thus, the Department of Defense's regulations exclude from the definition of records subject to the FOIA "commercially exploitable resources, including . . . computer software, if not created or used as primary sources of information about organizations, policies, functions, decisions, or procedures of a DOD component." 32 C.F.R. § 286.5(b)(2)(iii)(B). *SDC v. Mathews* is also cited as support for excluding computer software from the FOIA. However, while the court in *SDC v. Mathews* pointed to the commercial value of the MEDLARS database, it based its decision on a statutory delivery system that could not be reconciled with the FOIA's fee structure. Under both that decision and the 1986 amendment to the FOIA, commercial value is not sufficient to exclude computer records, including software, from the FOIA's fee provisions; a conflicting statutory fee system must also apply to such records.

Two agencies that initially claimed that computer software is not subject to the Act recently reversed their positions on appeal. The Federal Reserve Board denied a request for a computer program used to predict the probability of a recession in part on the ground that the computer program is not an "agency record." On appeal, however, the agency abandoned this claim and instead argued that although the information constituted a record under the Act, the program could be withheld because it would reveal the agency's deliberative process. The requester has not challenged this withholding further. Similarly, the Animal and Plant Health Inspection Service of the Department of Agriculture denied a request for the agency's animal use data in part on the ground that computer software is not covered by the FOIA. However, on appeal, the agency recognized that the information is covered by the FOIA, but stated that its proprietary computer software falls within Exemption 4, which protects confidential commercial information. Nonetheless, the agency then provided the requester computer tapes of all of the requested information. Regardless of whether these exemptions apply to the withheld information, these examples show that the agencies abandoned the indefensible claim that computer software is not an "agency record," and focused instead on the grounds provided in the Act for withholding information.[1]

These examples also show that, when agencies initially face requests for electronic information, they tend to have an immediate reaction that the Act simply does not apply to computer records. However, upon further review, these agencies have abandoned their initial refusal to apply the FOIA to computer records. These scenarios demonstrate that education concerning the applicability of the Act, rather than unnecessary legislative amendments, may be the answer to ensuring public availability of electronic information. In this way, early FOIA requests for electronic information serve to educate the agency as to their responsibilities under the Act.

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[1] In response to the argument that computer software is a tool, which can be withheld under Exemption 2 as relating solely to an internal agency practices, the district court in Yeager v. DEA, 678 F.2d 315, 318 (D.C. Cir. 1982), concluded that technical documents necessary to read computer data are more than mere internal agency material and must therefore be disclosed. In addition, since copyright protection "is not available for any work of the United States Government," 17 U.S.C. § 105, government-generated software cannot be withheld on the basis of copyright laws, although the converse may be true with respect to purchased software.

2. Agencies' Search Obligations.

Where an FOIA request "reasonably describes" the requested information, the agency has an obligation to conduct a reasonable search for responsive documents. See 5 U.S.C. § 552(a)(3)(A); Founding Church of Scientology of Washington D.C., Inc. v. NSA, 610 F.2d 824, 837 (D.C. Cir. 1979); National Cable Television Association v. FCC, 479 F.2d 183, 192 (D.C. Cir. 1973). In accordance with this obligation, an agency must make a "reasonable" effort to satisfy requests for information. Founding Church of Scientology, 610 F.2d at 837. Agencies must also ensure that their policies are consistent with the "duty to take reasonable steps to ferret out requested documents" and that they do not significantly impair the requester's ability to obtain records. McGehee v. CIA, 697 F.2d 1095, 1100-01, 1110, vacated in part on other grounds, 711 F.2d 1076 (D.C. Cir. 1983) (emphasis in original). In any challenge to an agency's policies, "the agency bears the burden of establishing that any limitations on the search it undertakes . . . comport with its obligation to conduct a reasonably thorough investigation." McGehee, 697 F.2d at 1101.

The reasonableness standard applies to all FOIA searches, without any exception for records that are maintained in electronic form. Indeed, the Senate Report to the 1974 FOIA amendments makes it clear that this standard of reasonableness governs searches for computerized information as well as those for paper records:

> With respect to agency records maintained in computerized form, the term "search" would include services functionally analogous to searches for records that are maintained in conventional form. Difficulties may sometimes be encountered in drawing clear distinctions between searches and other services involved in extracting requested information from computerized records systems.. . . With reference to computerized record systems, the term "search" would thus not be limited to standard record-finding, and in these situations charges would be permitted for services involving the use of computers needed to locate and extract the requested information.

S. Rep. No. 93-854, 93d Cong., 2d Sess. 12 (1974). A D.C. Circuit decision elaborates on the importance of reasonable searches for computerized information:

> Although accessing information from computers may involve a somewhat different process than locating and retrieving manually-stored records, these differences may not be used to circumvent the full disclosure policies of the FOIA. The type of storage system in which the agency has chosen to maintain its records cannot diminish the duties imposed by the FOIA.

Yeager v. Drug Enforcement Administration, 678 F.2d 315, 321 (D.C. Cir. 1982).

The reasonableness standard provides a workable test for determining whether a computer search must be made, just as it does for paper records searches. Under this test, the amount of effort that must be undertaken is considered in determining whether a search is reasonable. See Founding Church of Scientology, 610 F.2d at 837. If a particular computer search requires an extensive expenditure of time and resources and the application of specialized computer expertise, it may well involve more than what may be considered reasonable under the circumstances. As with paper records searches, application of this test depends on the circumstances and full consideration of all pertinent factors.

In lieu of the reasonableness test, many agencies have tried to carve out a hard and fast exception for computer searches that require computer programming. This exception is based on the principle that an agency does not have an obligation to create a new record in response to an FOIA request, but must only produce existing records. See National Labor Relations Board v. Sears Roebuck & Co., 421 U.S. 132, 161-62 (1975). The government has erroneously expanded this principle to argue that "computer programming" involves the creation of a record rather than production of an existing one.

There are many variations on this claim. For example, the Department of Health and Human Services takes the position "that writing a program to extract data in a new format is creating a record and that the FOIA does not require us to do that." Access to Health Care Financing Administration Data Training Materials at 53. Similarly, the Department of Defense's regulations state that the definition of "record" does not include "[i]nformation stored within a computer for which there is no existing computer program or printout." 32 C.F.R. § 286.5(c)(2)(vii).

This argument has been made repeatedly by the Occupational Safety and Health Administration in response to requests for inspection data. Prior to June 1989, the Department of Labor, of which OSHA is a part, had a regulation in place that made existing computer printouts subject to the FOIA, but stated that "[i]nformation in the Department's computerized records which could be produced only by additional programming of the computer, thus producing information not previously in being, is not required to be furnished under the Freedom of Information Act." 29 C.F.R. § 70.63 (1987). The Department of Labor's current regulations continue this policy by defining a computer search as the use of an existing computer program, 29 C.F.R. §§ 70.38(d) & 70.40(d)(1), and by stating that "[n]othing in 5 U.S.C. § 552 or this part requires that any agency or component create a new record, either manually from preexisting files or through creation of a computer program, in order to respond to a request for records." 29 C.F.R. § 70.5.

Under this policy, OSHA has claimed that inserting the name of a company into an existing program to retrieve an inspection history for that company amounted to "computer programming" and thus was not required under the FOIA. In other situations, OSHA has referred requesters to OSHA's computer office because, it claimed, it would be too burdensome to produce the paper records which were "agency records" subject to the FOIA. However, the computer office then claimed that the requested information did not constitute "agency records" because they could not be produced without "computer programming." In this way, paper records that met the definition of "agency records" somehow lost that status through computerization.

A policy based solely on whether computer programming is required is particularly troubling because that term has no fixed meaning. As the director of OSHA's computer office testified in a case in which Public Citizen challenged this policy, "It takes programming of the computer to do anything and to do everything. There is nothing that happens without some sort of programming." Deposition of John A. Katalinas at 162-63 (April 28, 1988), in Public Citizen v. OSHA, No. 86-0705 (D.D.C.). Therefore, the fact that programming is required does not indicate a level of effort that is necessarily burdensome for the agency. Nor does it indicate a particular level of expertise. Indeed, Mr. Katalinas testified that computer programming can take minutes or weeks to accomplish depending on the nature of the task. Id. at 130.

Since the term "computer programming" has no fixed meaning, it should come as no surprise that OSHA has applied this test inconsistently. Thus, although OSHA has stated that it has computer programming to retrieve inspection histories by company name, it has denied at least two FOIA requests for inspection histories for particular companies on the ground that it would require additional programming to produce the information. See, e.g., Community Environmental Health Center v. OSHA, No. 87-1755 (D.D.C.). Similarly, although OSHA claimed that it had obtained computer programming to produce information about violations of a specific regulation, it later stated that it required computer programming to respond to a subsequent request for such information. Defendant's Answers to Supplemental Set of Interrogatories, Public Citizen v. OSHA, No. 87-1755 (D.D.C.).

The lawsuits brought by Public Citizen and the Community Environmental Health Center challenging OSHA's policies settled after OSHA represented that it had expanded its computer capabilities and now considers all of the information that these requesters regularly seek from OSHA to be retrievable with existing computer programming. While the computer expansion might have occurred without the lawsuit, the litigation contributed to OSHA's eventual change in policy under which it now takes the position that it must utilize its existing programs to produce information in the formats sought by requesters. Since settling its lawsuit, Public Citizen has been able to obtain computer printouts of inspection data on a wide range of matters with a full waiver of all fees.[2]

Another agency reached a similar conclusion with respect to computer searches as a result of an administrative appeal. In response to a request for animal use data, the Animal and Plant Health Inspection Service of the Department of Agriculture stated "we cannot restructure our records in order to provide personalized service to each requester." Response to FOIA Request of Investor Responsibility Research Center (May 18, 1988). After an administrative appeal, however, the agency produced the requested information in the format sought by the requester.

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[2] However, when we requested the same information in the form of a computer tape, OSHA refused to produce it, claiming that it would require the creation of a computer program to make the information available in the form of a computer tape, a contention that we have disputed.

A rigid computer programming exception to the FOIA search requirement has no basis in the FOIA. The Act requires agencies to conduct reasonable searches, and the government agencies employing this programming rule have never contended that it is based on the reasonable search requirement. Instead, their sole contention is that, whenever computer programming is employed, it involves creation of a new record. However, it makes far more sense to analogize whatever computer programming is required for search purposes to the process of formulating and carrying out a search of paper records. The question then becomes whether a particular computer search, regardless of whether it requires programming or not, is unreasonable.

Even where a particular computer search requires an unreasonable amount of computer programming or is otherwise unreasonable, the agency's disclosure obligations are not necessarily waived. Many agencies have regulations that require them to assist requesters in narrowing overbroad requests or fitting them within agency limitations. Thus, the Department of

Labor's current regulations specify that

> Every reasonable effort shall be made to assist a requester in the identification and location of the record or records sought.

29 C.F.R. § 70.19(c). Previously, they added that, even if the search "unduly interfer[es] with Department operations because of staff time consumed or the resulting disruption of files," the agency must still confer with the requester "in an attempt to reduce the request to manageable proportions by reformulation and by outlining an orderly procedure for the production of the records." 29 C.F.R. § 70.46 (1987). Under such a regulation, an agency must inform the requester of the information that may be obtained with a reasonable effort and assist the requester in reformulating the request to come within any such restrictions.

In an administrative appeal decision, the Department of Energy required, as part of the agency's search obligation, that the agency inform the requester of the structure and general contents of the database so that the requester could specify the particular requested information. DOE Case No. KFA-0146 at 4-5 (Nov. 24, 1987)(Exhibit S). In that decision, DOE considered the distinction between the retrieval and creation of computer records and defined the circumstances in which a computer search and selection of information for retrieval did not amount to creation of a new document:

> With respect to computerized records, an agency need not make computations, restructure, or in any other way manipulate the data contained in computerized records. [citation to Yeager omitted]. Nevertheless, the mere retrieval of information already existing in a database, even if a computer must be programmed to select

> specified types of data, does not constitute creation of a new record. Rather, it is more in the nature of selecting from a paper document information which is within the scope of a request and deleting information that is unwanted or exempt.

DOE Case No. KFA-0146 at 3 (Nov. 24, 1987).

The DOE's approach eliminates any arbitrary line-drawing between requests that require programming, however extensive or slight, and those that do not, even if they require an unreasonable effort. In this way, computer searches are judged by the same reasonableness standard that applies to other types of FOIA requests.

3. Duty to Release Reasonably Segregable Portions of Records.

Under the 1974 amendments, "[a]ny reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt . . . ." 5 U.S.C. § 552(b). This language requires agencies to segregate and disclose nonexempt portions of records in response to FOIA requests, unless it would be unreasonably burdensome for the agency to do so.

In the context of paper records, agencies must produce documents with exempt portions redacted. On the other hand, an agency is not required to compile statistical data or change the content of a document to allow disclosure of a record that otherwise is exempt. See NLRB v. Sears, Roebuck & Co., 421 U.S. 132, 161-62 (1975).

These same standards apply to computer records. In Long v.

IRS, 596 F.2d 362, 366 (9th Cir. 1979), *cert. denied*, 446 U.S. 917 (1980), the requester sought computer tapes of taxpayer information with taxpayer identifiers deleted. The Ninth Circuit held that "the mere deletion of names, addresses, and social security numbers [does not] result[] in the agency's creating a whole new record . . . [and] is not considered an unreasonable burden to place on the agency," even though it would be expensive and inconvenient for the agency to carry out.

In a follow-up case, the same court refused to require the agency to undertake a far more extensive redaction effort. *Long v. IRS*, 825 F.2d 225 (9th Cir. 1987). The requester had suggested various editing strategies that would make otherwise exempt information disclosable. One strategy would have involved releasing corrected line-by-line information, another would have required deletions of certain information on a rotating basis, and a third would have involved releasing small enough subsets of cycles of information to prevent insight into patterns of audit selection. *Id*. at 229. A majority concluded that these disclosure plans involved such extensive editing that they would amount to creation of new records, which the FOIA does not require. *Id*. at 230. The dissenting judge disagreed, concluding that the first strategy would simply amount to redaction or deletion and could be accomplished by a computer program. *Id*. at 231.

A similar result was reached in *Yeager v. Drug Enforcement Administration*, 678 F.2d 315 (D.C. Cir. 1982). There, the requester sought access to a computer database of drug courier profiles, most of which was exempt on law enforcement grounds. The requester argued that the agency had an obligation to employ certain extremely complicated computer techniques, which reformulate computer data on individuals into statistical and more general data that does not allow the identification of individuals. The D.C. Circuit held that such techniques called for the creation of new "agency records" rather than the segregation and production of non-exempt information. 678 F.2d at 319 n. 9, 320-23. The Yeager Court flatly rejected the contention that "a document with some information deleted is a 'new document,' and therefore not subject to disclosure . . .," id. at 321, but it drew the line at "manipulation and restructuring of the substantive content" of information, which it held went beyond the agency's FOIA obligations. Id. at 323.[3]

These cases apply the same standards that govern paper records to electronic information. On the one hand, agencies must redact and delete exempt information even if a computer program is required to do so. On the other hand, they need not completely restructure the substantive content of records in order to make exempt information nonexempt. Again the question is not whether computer programming is required, but rather whether the record is modified to such an extent that it becomes a new record.

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[3] Clarke v. Department of Treasury, No. 84-1873 (E.D. Pa. 1986), has been cited for the proposition that an agency has no obligation to create a computer program in order to segregate nonexempt information. However, that decision concerned not merely creation of a program to extract the requested information, but also independent verification by the agency that the information so retrieved concerned institutional, and not individual, bondholders. That verification, not merely the use of a computer program to retrieve the information, amounted to creation of a new record.

4. *Production of Information in the Format Requested*.

Another issue that often arises is whether the agency must produce records in the format sought by the requester. The statute itself does not answer this question. However, it speaks in terms of "agency records" rather than information, which would suggest that a requester should be able to request access to a particular record, including a particular medium, such as microfiche, audio tape, or computer tape.

In *Dismukes v. Department of Interior*, 603 F. Supp. 760 (D.D.C. 1984), however, a district court held that an agency had fulfilled its FOIA obligations by releasing the requested information in the form of microfiche, even though the requester sought access to a computer tape of the information and it would be more convenient and less costly for the requester to obtain the information in the form of a computer tape.[4] The court suggested that the result would be different if the agency's choice of format unreasonably hampered the requester's access to the requested information or reduced the quantum of information made available to him or her.

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[4] The same district court applied the *Dismukes* rule to dismiss a case as a moot where the agency had produced the information in paper form, even though the requester sought a computer tape. *National Security Archive v. CIA*, No. 88-119 (D.D.C. July 26, 1988).

These qualifications are important limitations on the Dismukes holding. Thus, as that court recognized, an agency cannot diminish the quantity of information released or hamper the requester's access by producing the information in one format rather than another. Consistent with this principle, an agency could not produce xerox copies of slides or photographs instead of actual duplicates of such records. Nor could an agency deny access to audio tapes, while providing transcripts, since the audio versions provide information through the voice inflections recorded on the tape.

Unfortunately, the Dismukes case does not go far enough in protecting the public's right of access to computer records. Indeed, the Dismukes decision could impair the public's ability to use information obtained under the FOIA, even where there is no cost justification for this restriction. Costs and resources may often prohibit a requester from inputting information obtained in the form of paper records or microfiche into a computer system. See Timken Co. v. United States, 659 F. Supp. 239 (Ct. Int'l Trade 1987) (ordering release of computer tape as well as printout in discovery because of limitations on party's ability to use printout). Yet having the information in the form of a computer tape may enable the requester to analyze the data in ways that the government has not and obviate the requester's need to make a series of requests in order to obtain various computer printouts that present that data in different combinations. The Dismukes decision also does not take into account the technical feasibility and cost of producing the information in a requested format.

Since the *Dismukes* holding is in no way mandated by the FOIA itself, courts may adopt a different approach to the question. Moreover, agencies are certainly free to establish practices that honor requests for information in particular formats. Agencies (and courts) should adopt a reasonableness test in determining how to respond to such requests. *See* ACUS Recommendation, *supra*, at 51. Under such a test, agencies would be required to produce information in a particular format if it is reasonable to do so under the circumstances. The cost and technical feasibility of producing the information in the requested format would be weighed against the quantity, quality, and usefulness to the requester of the information in a particular format. Based on these factors, an agency (and reviewing courts) would then determine whether it is reasonable in the circumstances for the agency to produce the information in the requested format, with a presumption in favor of honoring the request.

CONCLUSION

The Freedom of Information Act establishes flexible principles that can be applied to computer records in a way that ensures public access and minimizes the burden imposed on agencies. Although agencies have sometimes misapplied the FOIA's principles to requests for access to electronic information, many of the erroneous positions can be attributed to a lack of understanding of how the Act can, and in some cases must, be applied to requests for electronic information. Through requests, administrative appeals, and sometimes litigation, agencies have taken a harder look at the FOIA's requirements and adopted more reasonable interpretations of how its principles apply in the context of computer records than was evident in their initial responses. This experience shows that it is not the Act that should be changed, but the agencies' interpretations of the Act in the computer age.

The restrictive policies that have been advanced by the agencies have generally not been accepted by the courts. In addition, many agencies have made assertions that computer information is not covered by the Act or that agencies are not required to use their computer capabilities to search for responsive information, only to retract those assertions during further stages of the administrative process. Since the FOIA embodies workable principles that can promote public access to electronic information without unduly burdening government agencies, and many agencies have embraced applications of FOIA's principles that do, in fact, facilitate public access, it is not at all clear that any new legislation tailored to electronic information can provide a better structure than the one that is already in place. For that reason, this subcommittee should maintain vigilant oversight of agency practices in this area to ensure that access to electronic information is provided to the public in accordance with the Act, but should refrain from legislating new standards that are simply unnecessary. To open the door to wholesale amendments of the Act at this juncture would only serve to call into question the applicability of the FOIA's principles to electronic information, when those principles are clearly applicable and serve to ensure public access to computer records.

Mr. WISE. Mr. Plesser.

STATEMENT OF RONALD PLESSER, PARTNER, PIPER & MARBURY

Mr. PLESSER. It is an honor to testify in front of this subcommittee. It is the seminal 1986 report of this subcommittee that foresaw many issues that we are discussing today. This subcommittee has always been on top of the issues. I would like to take a moment to say it is a special occasion to sit at the table with Bill Dobrovir, a teacher of mine, to help him celebrate one of the few victories at the Supreme Court under the FOIA.

The Government is approaching the year 2000 and no one has told the Justice Department. There are standards in the FOIA for access to electronic data bases. I think she also agrees with me, the next step, the Justice Department in counseling agencies and defending these cases are taking an old paper view of the statute. They have an obsolete concept of how FOIA should be interpreted.

They have had a couple of favorable cases in the early 1980's. They hold on to those precedents. What I find particularly frustrating is that we have to go to the courts fairly often to seek resolution of these issues. When we go to court in the context of public information, and the issue is electronic access to that public information, my experience, and I have only the experience of one practitioner, is that they always work out an agreement where we get access to the tape.

They do not want these issues to go to the court to be resolved in a meaningful manner. I think some of the material that I put forward in my statement, some of the cases that we work on, indicate that trend. One of the most interesting cases was the National Standards Association which brought a case against the Department of the Air Force. In that case, we were seeking the computer tapes of spare parts information produced by the Department of the Air Force.

Their response to that was that the information was available in microfiche therefore they did not have to make available the information in electronic computer tape form. There had been a 1983 case that had been discussed in this committee's earlier report which said that the Government essentially had the responsibility to disclose information and whatever the format of that information, the Government essentially could choose which was disclosed so they could disclose microfiche as opposed to computer tape. That decision was criticized in this committee's report and it has not been followed by other courts.

The Department of the Air Force tried to use the concept of that case to withhold the access to the tapes. I received what in retrospect is a somewhat humorous letter from the FOIA officer at Wright-Patterson Air Force Base who said that since the information was already public in microfiche and therefore he was not going to process my appeal for the computer records.

He said you already have the information. We are not denying anything. He sent me the appeal package back, he was not going to send it forward. We sued immediately and without any briefing or any discovery, the Government settled. They settled not only to give us access to the particular record, but for the first time the

Department of the Air Force regularly sent the tapes to the National Technical Service for a regular public dissemination. That trend has been repeated. I think what is needed is oversight, some enforcement perhaps from OMB, perhaps from the Justice Department of how Government agencies should respond.

The standards, of the FOIA, work pretty well and the amendments of 1974 have been particularly effective. There may be some need for change but I am not sure we see it now. One of the important concepts is equal access.

I represented the Journal of Commerce in a case against the Customs Service which I talk about in some detail in my written statement. Suffice it to say that the Customs Service has an electronic system where they correct all the information on import vessel manifests coming into the United States. They collect manifests for tariff and quota purposes. They wanted to get the port authorities to help them out in this process. They decided they would give online access to certain port authorities. It was not ever port authorities, but only the ones that were helping them. For everybody else, people using this information, at first they gave no public access, then they said we will give you a tape once a month. Then they said we will give you a tape once a week. We filed a lawsuit under the fifth amendment to the U.S. Constitution on equal protection of the law saying this was public information and that the Government had no right to favor one member of the public as against another member of the public in the dissemination of that information.

That case was settled although with a great deal of pressure from Judge Ritchie in the local district court. If one knows Judge Ritchie, he has a great deal of power in the settlement process. I think he favored our position and strongly encouraged the Department to settle the case.

Now anyone interested can pick up a daily tape of that information from the Customs Service. I think there has been a level of development. When I talk about the Freedom of Information Act I often talk about equal access. I think there is some confusion sometimes that that may implicate fee structures. It does not. It is meant to resolve the the Journal of Commerce issue. Electronic information should not be viewed as a commodity and given to one person and not another as favoritism. I think if electronic records are maintained in tape, disks, or CD they must be made available. The more difficult issues arise in terms of the obligation of an agency to selectively retrieve it from a data base. I think the courts will require access to that data if existing Government retrieval programs can reasonably find some information.

The difficulty comes when the system must be designed to receive the data. I think the reasonable interpretation of the FOIA is that reasonable programming is required—but the courts will bring about a further understanding of these issues. The invitation letter also asks for comments on dissemination policy which is a little different from freedom of information. Freedom of information is crucial in determining whether or not certain pieces of information are publicly available. Dissemination policy is, once you decide that, how do you maximize the disclosure. I think the programs developing in the Government, EDGAR, national trade data banks, basically have worked to further dissemination information.

In reading and reviewing the bill that you have introduced, and I know it is just the first draft, I think it discourages that type of activity because it requires the Government to provide end users direct access to that material. I think, for example, the EDGAR system would probably not pass muster under that statute. It would probably not comply with the standards in my view and I think the views of other people who have looked at it. I raise that now as a concern because I know we are going through a very important process.

That is not to be interpreted as saying the Government should not disseminate directly. They should. They should also do things to motivate libraries, other public systems, Government information companies, and a broad range of people to disseminate Government information. Thank you.

[The prepared statement of Mr. Plesser follows:]

TESTIMONY OF

RONALD L. PLESSER

PIPER & MARBURY

WASHINGTON, D.C.

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT INFORMATION,
JUSTICE AND AGRICULTURE

COMMITTEE ON GOVERNMENT OPERATIONS

U.S. HOUSE OF REPRESENTATIVES

July 11, 1989

Mr. Chairman and Members of the Subcommittee:

My name is Ronald Plesser and I am a partner in the Washington, D.C. law firm of Piper and Marbury. I have been an "Information" lawyer since 1972 and have participated in much of the development of the Freedom of Information Act. I worked for several years with Ralph Nader and argued several cases that remain significant today including Vaughn v. Rosen and Stern v. Richardson. I also assisted in the passage of the very important amendments to the Freedom of Information Act in 1974. I then became General Counsel to the U.S. Privacy Protection Study Commission from 1975-1977. Since that time I have been in private practice representing individuals, newspapers, data base companies, and others interested in access to and dissemination of government information. Unfortunately I have lost count how many times I have testified before this Subcommittee. (I should make an inquiry of the Congressional Information Service's computer.) It is always a special honor to be requested to testify here because of the deep knowledge of this Subcommittee and its staff on these issues.

Today I will discuss access under the Freedom of Information Act to electronic records and the responsibility of the government to make electronic information publicly available.

The seminal work on this subject was created by this Subcommittee in its 1986 report on Electronic Collection And Dissemination Of Information By Federal Agencies: A Policy Review. Many of the issues identified in that report are the very ones that we are seeking now to resolve.

The government intends to be paperless in the year 2000. This is the expressed goal of the General Services Administration. Unfortunately no one has yet told this to the Department of Justice. In defending FOIA litigation, and in counseling the government agencies, they remain in a world of paper. Their obsolete attitude can not last for very long. Interesting enough, with some older exceptions, the courts are much more open to the electronification of the FOIA than is the Department of Justice.

There are two distinct issues which often overlap. First, is access to electronic records under the FOIA. Second, is the affirmative obligation of the government to make electronic information available for public dissemination.

The FOIA has some affirmative disclosure requirements for rules, opinions, decisions, and similar elements of agency law. However, by and large it is a passive statute. That is, someone from outside the government first must request an identifiable record. The government must either then give it to the requester or withhold it. If it withholds a record and the requester files suit, then the government has the burden to demonstrate why it is not available. Technically, the government and the courts can only respond to requests for records that exist. Therefore, a request for future records or records that do not exist in a retrievable form at the time of the request can be denied because in the government's view they are not withholding anything because they do not have anything to withhold.

I am not totally critical of the concept of record by request access because in many cases it allows for a clear cut factual determination. If several cases are won for a type of record, someone will get the message. The recent Supreme Court case of Tax Analysts v. Department of Justice indicates the value of this approach. The government's position was indefensible because there was no reason under the FOIA to withhold the records. If the debate was held in the broader world of dissemination policy, perhaps the result would have been different. Now, after access is established, the government will have to determine how to make that information regularly available. The FOIA only speaks to the particular case, while dissemination policy reflects how the government plans to affirmatively provide access to the public.

I have prosecuted many requests for electronic records and generally I have been successful where the underlying information is public. When I proceed to court, the government generally settles. This is fortunate for my clients who can require public release of data with a minimum of effort. It may, however, be unfortunate for the development of the law, because the Justice Department has in many cases avoided judicial decisions on these important issues. It is my experience that when you come to court with a case concerning electronic access to otherwise public information, the Justice Department usually capitulates. Meanwhile, when you go back to agencies on the next case, they will continue to assert these discredited theories.

Sue Long in one of her suits against the IRS was able to persuade the 9th Circuit that computer tapes are subject to the FOIA. Long v. IRS, 596 F.2d 362 (9th Cir. 1979), cert denied 446 U.S. 917 (1980). Courts have not generally disagreed with that pronouncement. The District Court for the District of Columbia, however, in the Dismukes case (discussed in this Subcommittee's 1986 report) did hold that if government information was available in other media then they did not have to disclose the computer records. The government has held onto the Dismukes case as a matter of policy, but does not seem to want to relitigate the issue. Last year the Department of the Air Force refused access to computer tape used to create microfiche copies of spare part suitability records on the sole ground that the information was available in microfiche and that the government did not have to provide access to computer tapes. The Air Force's FOIA officer at Wright-Patterson Air

Force Base even refused to process the appeal to the Secretary of the Air Force as required by regulations because in his view nothing was being withheld since the information sought was available in microfiche. (Letter of George Conner is attached hereto as Exhibit A). Finally, we brought suit and the Justice Department, before any discovery or briefing, agreed to have the tapes released and to have them made regularly available through NTIS. (Copy of Stipulation of Dismissal in National Standards Association v. Department of the Air Force, (Civil Action No. 88-0172-TFH) is attached hereto as Exhibit B)).

In another case, Congressional Information Service was able to obtain access to the computer tapes containing the mailing lists of subscribers to the Federal Register. The interesting thing about that case was that it was against the U.S. Government Printing Office ("GPO"), allegedly a legislative agency and not subject to the FOIA. Again, in order to avoid court resolution of sensitive issues, the GPO entered into a settlement agreement which requires the GPO to disclose records. It was interesting that the fact that these were computerized records did not seem to bother anyone given the other issues in the case. (Copy of Settlement Agreement is attached hereto as Exhibit C).

Perhaps the most significant case for electronic access that I have been responsible for has been Journal of Commerce v. U.S. Department of the Treasury, et al. (Civil Action No. 88-2132-CRR)).

That case involved a major system developed by the Customs Service entitled Automated Commercial System ("ACS"). One part of ACS is the Automated Manifest System or "AMS." ACS is a highly centralized system integrating all the aspects of clearing and collecting tariffs on goods imported into the United States. It links steamship companies, brokers, freightforwarders, insurers, and others to the Customs Service on an on-line basis. AMS is the sub-system by which steamship companies may electronically file manifests of imported cargoes. The Customs Service thus has an on-line data base containing all imports brought into the U.S. by ocean vessel. The Journal of Commerce has since 1827 also maintained such a data base for dissemination (see 19 U.S.C. § 1431) which allows access to manifests for the purposes of publication. The Customs Service proposed to provide on-line access to certain port authorities (ostensibly public users for the purposes of these systems) with no restriction on further public release. They at first provided no public access at all to this data base. Then they offered a monthly tape and then a weekly one. They were using electronic information as a commodity encouraging certain port authorities by providing them immediate and enhanced access to public governmental data.

We brought suit not under the FOIA but rather under the equal protection provisions of the Fifth Amendment to the U.S. Constitution. Again the government settled and is now providing daily tape access to the AMS data base pursuant to a consent order. (Copy of Consent Order is attached hereto as Exhibit D). Here the crucial issue is equal access to information. This is a principle that should underlie any public access statute.

These cases and the others that have been brought do not resolve all of the issues. Clearly if electronic records are maintained in some medium like tape, discs or CD-ROM they must be available under the FOIA. The more difficult issues arises in terms of the obligation of an agency to selectively retrieve information from a data base. I believe that the courts will require, absent special circumstances, access to that data if existing government retrieval programs can reasonably find such information. The difficulty arises when additional programming or system design may be required to retrieve such data. I believe that time and reasonable interpretation of the FOIA by the courts will bring about a reasonable resolution of these issues.

Government dissemination policy is a related, but somewhat different matter. I believe that the government should disseminate information electronically through many means. This can be done directly by the government through the direct provision of end user services and by catalyzing electronic dissemination by the press, libraries, public interest groups and information companies. Two good examples of this are the EDGAR system developed by the SEC and the National Trade Data Base being developed by the Department of Commerce. In both cases the government is collecting, organizing and making available electronic data in a timely fashion for public dissemination. The EDGAR system is particularly noteworthy because it will assure that filings with the SEC are instantaneously disseminated through an unlimited number of diverse and competing systems. The public will be extraordinarily benefitted by this rapid and diverse access. The alternative of direct end user access to the government's system was rejected. It would have been very costly and ultimately burdened by all of the problems including slowness that typify big governmental systems. It is important to note that both the EDGAR program and the National Trade Data Bank were developed in part as the result of a very particular authorizing legislation to reflect clear legislative mandates.

Mr. Chairman, I have been concerned that the bill that you have introduced, H.R. 2381, would discourage or even prohibit programs like EDGAR and the National Trade Data Bank. The emphasis in that legislation is on the direct dissemination of data. It is reasonable to conclude, for example, that the SEC in addition to EDGAR, would have to directly disseminate SEC filings to any end user, thereby forcing them to compete with their own contractor, and negate the system developed that will encourage diverse and competitive products. I assume this is an unintended result and will be clarified.

The First Amendment and good sense should resist the well intentioned urge to make the government all things to all people. If the government winds up as the primary direct disseminator of its own data, the people will be ill-served. Diversity and competitive services, not a monolithic government monopoly, will best serve and inform the public.

Thank you for your interest in these matters.

DEPARTMENT OF THE AIR FORCE
HEADQUARTERS AIR FORCE LOGISTICS COMMAND
WRIGHT-PATTERSON AIR FORCE BASE, OHIO 45433-5001

14 JAN 1988

Mr Ronald L. Plesser
Nash, Railsback, and Plesser
1133 Fifteenth Street, N.W.
Washington D.C. 20005

Dear Mr Plesser

This is in response to your letter of 14 Dec 87 on behalf of your client National Standards Association, Inc. (NSA).

This is to advise you that no administrative FOIA appeal rights exist when there was no denial of NSA's 9 Nov 87 FOIA request for D043 data. Our 24 Nov 87 letter to NSA clearly stated that "the requested data is available for public disclosure on microfiche" and we are willing to provide NSA the information. This cannot be construed as a denial. When there is no denial, no administrative appeal rights exist under FOIA.

FOIA requires that the government provide non-exempt information to the public in a reasonably usable format. It does not require the information to be in a specific format to meet a specific commercial need of a particular requester. This is not what Congress intended. It is within the government's discretion in what format the information is made available to the public, provided it is accessible to and reasonably usable by the public.

NSA's motive for requesting the data or its use has no relevance and cannot be taken into consideration when processing a FOIA request. Past releases of information in a particular format do not bind the government to that format forever. When conditions change and it is in the government's best interest to change, we are under a duty to change.

This response has been coordinated on by our Staff Judge Advocate Office.

George Conner
GEORGE CONNER
Records Management
Directorate of Administration

EXHIBIT A

BEST COPY AVAILABLE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

RECEIVED
APR 14 1988
Judge THOMAS F. HOGAN

NATIONAL STANDARDS ASSOCIATION, INC.)
Plaintiff,)
v.) Civil Action No. 88-0172-TFH
DEPARTMENT OF THE AIR FORCE, *et al*.)
Defendants.)

FILED
APR 15 1988
Clerk, U.S. District Court
District of Columbia

STIPULATION OF DISMISSAL

1. In this action, plaintiff National Standards Association, Inc., a vendor of procurement-related information, seeks access under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, to a magnetic computer tape created by and in the possession or control of the Department of the Air Force ("Air Force"). The magnetic computer tape contains an updated listing of Interchangeability and Substitutability ("I & S") information contained within the DO43 logistics database maintained by the Air Force. The I & S records pertain to the interchangeability and substitutability of parts utilized by the Air Force. The magnetic computer tape is currently used to update microfiche

EXHIBIT B

records which are produced from the computer tape on a bimonthly basis. The I & S fiche is regularly distributed to offices within the Air Force and is available to the public upon request. The magnetic computer tape described above constitutes the record to which plaintiff seeks access under the FOIA.

2. Pursuant to discussions between the parties, plaintiff and defendants have agreed to the dismissal of this lawsuit on the basis of the following arrangements:

A. The Air Force will make the most current magnetic computer tape used to generate I & S records directly available to plaintiff, in the format used by the Air Force, upon approval of this Stipulation of Dismissal by the Court.

B. The Air Force intends, starting within 30 days of the date hereof, to routinely and promptly make available to the National Technical Information Service of the Department of Commerce, for public distribution, the most recent magnetic computer tape, in the format used by the Air Force, created for the purpose of generating regularly updated I & S records.

C. Each party shall bear its own costs and fees.

Respectfully submitted,

Jay B. Stephens
Jay B. Stephens
(D.C. Bar #177840)
United States Attorney

Ronald Plesser
Ronald L. Plesser
(D.C. Bar #141846)

John Bates
John D. Bates
(D.C. Bar #934927)
Assistant United States Attorney

David E. Giamporcaro
David E. Giamporcaro
(D.C. Bar #290908)

John P Adams
John P. Adams
(D.C. Bar #926816)
Attorney-Advisor
Office of Information & Privacy
U.S. DEPARTMENT OF JUSTICE
10th & Constitution Avenue, N.W.
Room 7238
Washington, D.C. 20530
(202) 786-4796

NASH, RAILSBACK & PLESSER
1133 15th Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 857-0220

Counsel for Defendants
Department of the Air Force
and Department of Defense

Counsel for Plaintiff
National Standards Association
Inc.

Dated: April 7, 1988, 1988

SO ORDERED this 14th day of

April, 1988.

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

CONGRESSIONAL INFORMATION SERVICE, INC.)
Plaintiff,)
v.) C.A. No. 86-3408-HHG
U.S. GOVERNMENT PRINTING OFFICE, et al.)
Defendants.)

FILED ✓
OCT 2 1987
Clerk, U.S. District Court
District of Columbia

SETTLEMENT AGREEMENT

1. In this action, plaintiff Congressional Information Service, Inc. ("CIS") seeks disclosure under the Freedom of Information Act ("FOIA"), 5 U.S.C. §552, of the list of paid subscribers to the Federal Register (the "requested records").

2. Defendant U.S. Government Printing Office ("GPO") is in possession of the requested records, and GPO disputes that it is an agency subject to the requirements of the FOIA.

3. Defendant National Archives and Records Administration ("NARA"), Office of the Federal Register ("OFR") and Administrative Committee of the Federal Register ("ACFR"), are subject to the FOIA, and dispute that they are in possession or control of the requested records.

4. CIS and defendants agree in settlement of this action to the following:

A. GPO shall make the requested records available to CIS by entering into periodic mailing list use agreements with CIS in the form and substance of Exhibit A hereto. Such agreements shall have the effect of providing to CIS an accurate

EXHIBIT C

and complete list of the paid subscribers to the Federal Register, upon thirty (30) days notice and at least four times per calendar year as may be reasonably requested by CIS. CIS shall be permitted to obtain portions of the list based upon particular criteria, if available, such as institutional type or sample subsets. However, the obtaining of a sample subset for testing purposes will not limit the right of CIS to use the full list at least four times per year.

B. The GPO shall provide the list of paid subscribers on machine readable magnetic tape, 4-up machine-affixable cheshire mailing labels, or 4-up pressure sensitive mailing labels, all in zip code sequence. For foreign addresses, if GPO systems are unable to print the full country name on 4-up cheshire labels, a magnetic tape or pressure sensitive labels will be provided.

C. Insofar as possible, the GPO will delete the names and addresses of subscribers to the Federal Register who have requested that their identity not be released. Each subscriber request for deletion will be honored by GPO for a period not to exceed the subscription period in which the request was submitted, although such requests may be renewed at the time the subscription is renewed.

D. Notwithstanding the terms of any indemnification or hold harmless provision contained in Exhibit A or that GPO may seek to require, CIS shall not be responsible to GPO for any claim or action arising from or brought under the Privacy Act, 5 U.S.C. §552a or any similar statute, regulation or law.

E. GPO may modify the terms of Exhibit A, and establish fees that may be charged thereunder, only as may be consistent with this agreement, prevailing commercial practices for the provision of similar type mailing lists, or as CIS may otherwise agree.

F. NARA, OFR and ACFR agree that if the requested records are no longer maintained by GPO but are maintained by any other defendant or its successor, that such defendant or successor shall provide CIS prompt access to the requested records under the FOIA.

G. In the event a court of competent jurisdiction determines, or in the event that GPO asserts, that GPO is subject to the requirements of the Privacy Act, 5 U.S.C. §552a, GPO agrees promptly to provide the requested records to CIS pursuant to the FOIA. GPO reserves the right to raise exemptions to the FOIA.

H. The government shall pay to CIS $26,370.50 for all fees and costs incurred in this action.

Agreed to this 23rd day of
September, 1987

Ronald L Plesser

Ronald L. Plesser (#141846)
Alan R. Schwartz (#933176)
NASH, RAILSBACK & PLESSER
1133 Fifteenth Street, N.W.
Suite 1100
Washington, D.C. 20005
(202) 857-0220

Attorneys for Congressional
Information Service, Inc.

Agreed to this 28 day of
September, 1987

Ralph E. Kennickell, Jr.
Public Printer
United States Government
Printing Office
Washington, D.C. 20401

Joseph E. diGenova RCL
Joseph E. Digenova (#073320)
United States Attorney

Royce C. Lamberth
Royce C. Lamberth (#189761)
Assistant United States Attorney

STUART H. NEWBERGER (#294793)
Assistant U.S. Attorney
United States Attorney's Office
Civil Division - 4th Floor
Judiciary Center Building
555 4th Street, N.W.
Washington, D.C. 20001
(202) 272-9262

Attorneys for
United States Government
Printing Office
National Archives and Records
Administration
Office of the Federal Register
Administrative Committee of the
Federal Register

APPROVED this 6th day of October, 1987.

United States District Judge

UNITED STATES GOVERNMENT PRINTING OFFICE
SUPERINTENDENT OF DOCUMENTS

MAILING LIST USE AGREEMENT

User Name: ____________________

Address: ____________________

City, State, Zip Code: ____________________

Phone: ____________________

List Requested: ____________________

User and GPO agree that the following terms and conditions shall be applicable to the use of a Government Printing Office ("GPO") mailing list:

1. Pursuant to this Agreement, GPO shall provide to User the names and addresses of the subscribers of the above-referenced list of subscribers. Such list shall be accurate as of thirty (30) days prior to the date of this contract.

2. The GPO shall provide the list of paid subscribers on 4-up pressure sensitive mailing labels, all in zip code sequence.

3. Insofar as possible, the GPO will delete the names and addresses of subscribers to the Federal Register who have requested that their identity not be released.

4. The names and addresses of subscribers furnished by GPO are provided to the User for a one-time use only and may not be copied, duplicated or reproduced in any form by the User. The User acknowledges that the list shall at all times remain the sole property of the GPO.

5. The list may be used by the User only in conjunction with promotional and/or research materials approved by the Superintendent of Documents, which approval shall not be unreasonably withheld. The User agrees to furnish to the Superintendent of Documents two copies of the typewritten manuscript of such material no less than two weeks prior to the proposed release by GPO of the list.

EXHIBIT A
to
SETTLEMENT AGREEMENT
(C.A. No. 86-3408-HHG)

6. The User shall indemnify and hold harmless the GPO against any claim, damage, expense, liability or obligation incurred by reason of User's use of this list.

7. The User agrees to pay a fee, in advance, to the Superintendent of Documents at the rate set forth on the enclosed "Schedule of Fees for Superintendent of Documents Mailing Lists."

Agreed to this ___ day of _____________, 19__.

Government Printing Office Superintendent of Documents	_______________ [LIST USER]
By: _______________	By: _______________
Title: _______________	Title: _______________

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOURNAL OF COMMERCE, INC.,
Plaintiff,
v.
UNITED STATES DEPARTMENT OF THE TREASURY, et al.
Defendants.

C.A. No. 88-2132-CRR

FILED
NOV 16 1988
Clerk, U.S. District Court
District of Columbia

CONSENT ORDER

1. Plaintiff, Journal of Commerce, Inc. ("JOC"), brought this action seeking injunctive and declaratory relief to enjoin defendant, the United States Customs Service ("Customs"), from granting port authorities on-line access to electronically filed vessel import manifest data through Customs' Automated Manifest System ("AMS") while providing weekly tape access to the press and the public pursuant to a notice published in the Federal Register, 53 Fed. Reg. 25041 (July 1, 1988).

2. Plaintiff sought an order of this court enjoining the implementation of AMS, absent equal access to JOC and other members of the press, and directing Customs to provide JOC and other members of the press with access to vessel import manifest data in the same manner as it is accorded to port authorities.

3. In settlement of this action, plaintiff and defendant agree to the entry of a judgment providing as follows:

EXHIBIT D

A. Beginning within 30 days of the entry of this order, Customs agrees to provide to JOC magnetic tapes or equivalent electronic media containing all vessel import manifest data and changes, including electronically pre-filed manifest data, that Customs provides to the port authorities via the AMS. Customs will prepare the magnetic tape daily, seven days per week, and make it available for pickup in the Washington, D.C. metropolitan area by JOC no later than the close of business the day following the day of transmission to Customs. Customs may change the method of distribution as long as such changes do not materially affect the rights of the JOC under this agreement.

B. Daily tapes will be made available provided that the AMS system is substantially operational. If it is not substantially operational for all purposes on the basis of unforeseeable events, technical failure or for required servicing, all data will be provided the next day the system is operational. The daily magnetic tape provided to JOC will contain the specific elements of vessel import manifest data listed in the Freedom of Information (FOI) Manifest Data File User Details dated August 30, 1988 attached hereto, hereby incorporated by reference; and container number; and seal number. Customs may redact from the daily magnetic tape the names and addresses of those importers or consignees.

and that of their shippers, that have requested confidential treatment pursuant to 19 C.F.R. §103.14(d). Accordingly, there will be no time embargo or other restriction on the use of the vessel import manifest data from the AMS provided to JOC via daily magnetic tape.

C. JOC shall bear the cost of generating the daily magnetic tape provided to it by Customs. The calculation of such cost shall include the cost of computer time, the cost of the manpower necessary to accomplish the task of generating the daily tape, the cost of shipping if requested, and the cost of materials including the daily reels of magnetic computer tape. JOC shall not bear the expense of researching and developing the procedures for creating and providing access to the import manifest data in the AMS via the daily magnetic tape system, or of maintaining the AMS.

D. If the Customs Service decides to discontinue dissemination of AMS vessel manifest data including dissemination to port authorities, then it shall be under no obligation under this order to provide electronic access to JOC.

4. To the extent that additional items of information are placed on AMS and provided to the port authorities, they will be promptly included in the tapes and made available to JOC

pursuant to this order. This consent order does not resolve any issues related to the inclusion of marks and numbers on AMS or as to the legal sufficiency of electronic manifests without marks and numbers pursuant to 19 U.S.C. §1431(c).

5. This case shall be dismissed with prejudice and this Court shall retain jurisdiction of this matter to assure compliance with this Consent Order.

6. Each side will bear its own costs including attorneys' fees.

Ronald Plesser

Ronald L. Plesser (D.C. Bar #141846)
Piper & Marbury
1200 Nineteenth Street, N.W.
Washington, D.C. 20036
(202) 861-3900

Attorneys for Plaintiff
Journal of Commerce, Inc.

Jay B. Stevens (D.C. Bar #177840)
United States Attorney

John D. Bates (D.C. Bar #934927)
Assistant United States Attorney

Curtis E. Hall (D.C. Bar #385866)
Assistant United States Attorney

Judiciary Center Building
555 Fourth Street, N.W.
Washington, D.C. 20001
(202) 272-9224

Attorneys for Defendants
United States Department of the Treasury,
United States Customs Service

SO ORDERED: Charles R. Richey 11/15/55
Charles R. Richey Date
United States District Judge

FILED

NOV 16 1988

Clerk, U.S. District Court
District of Columbia

attachment

FOITECH

AUGUST 30, 1988

FREEDOM OF INFORMATION (FOI) MANIFEST DATA FILE USER DETAILS

FILE SPECS:

DATA SET NAME (USCS) = MANFEST.PROD.ACS.FOI.DATA

TAPE LABEL = STANDARD

BPI = 1600

LOGICAL RECORD LENGTH = 270

BLOCK SIZE = 2700 (10 X 270)

THE FILE CONSISTS OF FIVE RECORD TYPES

'1' - BILL OF LADING INFORMATION RECORD

'2' - SHIPPER NAME AND ADDRESS RECORD

'3' - CONSIGNEE NAME AND ADDRESS RECORD

'4' - NOTIFY PARTY NAME AND ADDRESS RECORD

'5' - DESCRIPTION RECORD

THERE WILL BE A TYPE '1' RECORD FOR EVERY BILL OF LADING RECORD THAT U.S. CUSTOMS HAS SELECTED TO BE PROCESSED, DEPENDING ON THE EXISTENCE OF A MATCHING PRIVACY FILE RECORD. THERE MAY OR MAY NOT BE A TYPE '2' RECORD AND/OR A TYPE '3' RECORD AND/OR A TYPE '4' RECORD. EACH TYPE '5' RECORD MAY CONTAIN UP TO FIVE (5) DESCRIPTIONS ALONG WITH A "PIECE COUNT" FOR EACH. WHEN A "PIECE COUNT" IS ZERO (0), IT PERTAINS TO THE PREVIOUS DESCRIPTION WITH A "PIECE COUNT" GREATER THAN ZERO (0). EACH TYPE '1' RECORD MAY HAVE UP TO 999 DESCRIPTIONS, WHICH WOULD BE 200 TYPE '5' RECORDS WITH THE LAST ONE CONTAINING FOUR (4) DESCRIPTIONS.

FOITECH1

AUGUST 30, 1988

FREEDOM OF INFORMATION (FOI) MANIFEST DATA FILE USER DETAILS

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RECORD LAYOUT:

 1   -   BILL OF LADING RECORD
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         01  BILL-OF-LADING-RECORD.
             03  RECORD ID                              PIC X(01)
                                                         VALUE '1'.
             03  CARRIER-CODE                           PIC X(04).
             03  VESSEL-COUNTRY-CODE                    PIC X(02).
             03  VESSEL-NAME                            PIC X(23).
             03  VOYAGE-NUMBER                          PIC X(05).
             03  DP-OF-UNLADING                         PIC 9(04).
             03  EST-ARRIVAL-DATE                       PIC 9(06).
             03  BILL-OF-LADING-NBR                     PIC X(12).
             03  FOREIGN-PORT-LADING                    PIC X(05).
             03  MANIFEST-QTY                           PIC 9(11).
             03  MANIFEST-UNITS                         PIC X(02).
             03  WEIGHT                                 PIC 9(11).
             03  WEIGHT-UNIT                            PIC 9(02).
             03  MEASUREMENT                            PIC 9(11).
             03  MEASUREMENT-UNIT                       PIC 9(02).
             03  FILLER                                 PIC X(174).

 2   -   SHIPPER NAME AND ADDRESS RECORD
 -       -------------------------------

         01  SHIPPER-RECORD.
             03  RECORD ID                              PIC X(01)
                                                         VALUE '2'.
             03  SHIPPER-NAME                           PIC X(35).
             03  SHIPPER-ADDRESS.
                 05  SHIPPER-ADDR-1                     PIC X(35).
                 05  SHIPPER-ADDR-2                     PIC X(35).
                 05  SHIPPER-ADDR-3                     PIC X(35).
                 05  SHIPPER-ADDR-4                     PIC X(35).
             03  FILLER                                 PIC X(102).

 3   -   CONSIGNEE RECORD
 -       ----------------

         01  CONSIGNEE-RECORD.
             03  RECORD ID                              PIC X(01)
                                                         VALUE '3'.
             03  CONSIGNEE-NAME                         PIC X(35).
             03  CONSIGNEE-ADDRESS.
                 05  CONSIGNEE-ADDR-1                   PIC X(35).
                 05  CONSIGNEE-ADDR-2                   PIC X(35).
                 05  CONSIGNEE-ADDR-3                   PIC X(35).
                 05  CONSIGNEE-ADDR-4                   PIC X(35).
                 -- --                                  PIC X(102).
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(TECH2

                                                   AUGUST 30, 1988

       FREEDOM OF INFORMATION (FOI) MANIFEST DATA FILE USER DETAILS

    RECORD LAYOUT:

        4   -   NOTIFY PARTY NAME AND ADDRESS RECORD
        -       ------------------------------------

                01  NOTIFY-PARTY-RECORD.
                    03  RECORD-ID                           PIC X(01)
                                                             VALUE '4'.
                    03  NTFY-PARTY-NAME                     PIC X(35).
                    03  NTFY-PARTY-ADDRESS.
                        05  NTFY-PARTY-ADDR-1               PIC X(35).
                        05  NTFY-PARTY-ADDR-2               PIC X(35).
                        05  NTFY-PARTY-ADDR-3               PIC X(35).
                        05  NTFY-PARTY-ADDR-4               PIC X(35).
                    03  FILLER                              PIC X(102).

        5   -   DESCRIPTION RECORD
        -       ------------------

                01  DESCRIPTION-RECORD.
                    03  RECORD-ID                           PIC X(01)
                                                             VALUE '5'.
                    03  DESCRIPTION-AREA                    PIC X(275).
                    03  FILLER REDEFINES DESCRIPTION-AREA.
                        05  DESCRIPTION-LINE OCCURS 5 TIMES.
                            07  PIECE-COUNT                 PIC 9(10).
                            07  DESCRIPTION                 PIC X(45).
                    03  FILLER                              PIC X(02).
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Mr. **Wise**. Our final panelist is William A. Dobrovir, fresh from the Supreme Court. It is good to have you with us.

STATEMENT OF WILLIAM A. DOBROVIR, DOBROVIR & GEPHARDT

Mr. **Dobrovir**. Thank you.

I thank Ronald Plesser for reminding me how long in the tooth I am getting. I have been litigating freedom of information cases since 1967; about a dozen in the court of appeals, and two in the Supreme Court. I was counsel for the plaintiffs in the case the Supreme Court decided June 23, *U.S. Department of Justice* v. *Tax Analysts*. That case, I think, has settled once and for all some questions that have vexed the courts and requesters over the years: What is an improper withholding, and what are "agency records."

The case involved the Department's copies of Federal court tax decisions, which the Department received in its capacity as counsel for the United States in those cases. The Court decided that agency records include anything the agency either creates or obtains, very specifically using the words, "studies, trade journal reports, and anything else produced by private or governmental organizations." The second requirement is that the agency must control the document, that is it must be in its possession in the legitimate conduct of official duties. It excludes personal matters that agency employees keep for personal reference. Most important with respect to electronic information, the Court in the opinion explicitly adopted the definition of records in the Records Disposal Act which includes "machine readable materials made or received by an agency in connection with the transaction of public business."

Now I think that means, and cannot mean anything other than this: Not only data that may be stored electronically in computer records, but any program that the Government itself has either purchased or developed for the purpose of processing and retrieving that data, is an agency record and is covered by the FOIA. If the agency is required to use its program in order to retrieve the data to respond to a request, that is not creating a new record.

Another important holding by the Court was to lay to rest an argument that agencies are prone to make: That in addition to the nine exemptions there sometimes is another reason, some other basis for withholding. The Court said explicitly and finally that anything that is withheld is improperly withheld unless it comes under one of the nine specific exemptions in section 552(b).

So this decision should end any controversy about what is an agency record, about whether electronic data is included under the act, about whether programs or software are included and whether or not an agency has an obligation to apply its program to its data in order to retrieve it in response to a request.

I want to raise something here which seems to me a bear lurking in the forest since the *Tax Analysts* decision: That is, the application of the Copyright Act to data an agency may have purchased, for example, and which it uses in its business. Sometimes this data is extremely expensive, is proprietary but is offered for sale to the public often at very high prices. The agency purchases it. The requester comes in under OMB guidelines asking for it at 10 cents per page, or the machine or personnel costs if it is electronic.

No court ever has decided what the Government's obligations are for copyrighted data. The Supreme Court ducked the question by an equally divided vote when it considered the case of *Williams* v. *Wilkins* in the court of claims which had held that the National Library of Medicine was not violating the Copyright Act when it provided copies of copyrighted materials for a user at the mere cost of copying. The *Weissberg* case, in the D.C. circuit did not decide it, although the issue was raised there concerning copyrighted photographs of the Martin Luther King assassination owned by Life Magazine in the possession of the FBI. The case was finally settled, Time agreeing to give the requester access to the copies.

The Department of Justice takes the position that the Copyright Act is not a section 3 statute. On the other hand, an agency may be in violation of the act if it copies copyrighted data. This is a question that the committee might want to consider and address in the new legislation that is being considered.

Thank you.

Mr. WISE. Thank you very much.

I am glad to be joined by Glenn English, former chairman of this subcommittee.

Over the years, most Supreme Court FOIA cases seem to have been decided in favor of the Government. In general, lower courts have been supportive of the disclosure policies of the FOIA. Overlooking the *Tax Analysts* case, do you feel the Supreme Court has been more hostile to disclosure and more sympathetic to the Government?

Mr. DOBROVIR. It is something like government 23 or 24, requesters 3. It is hard to say "hostile," but on the record at least, the Supreme Court has generally come down on the side of the Government. Also the Solicitor General's office has an excellent record of getting the Supreme Court to take FOIA cases that it decides it wants to challenge. I think one court has taken almost all my cases where the Solicitor General has filed a petition for certiorari.

Ms. GOLDMAN. I think it is fair to say the Supreme court has not been a friend of the requesters. But not all or even a significant portion of FOIA cases are resolved by that Court. Over time, the D.C. Circuit, where many FOIA cases are brought has been friendlier to requesters. The standards have been quite workable that have been established by that court and have laid to rest a lot of disputes that have come up over time.

Mr. PLESSER. They have been generally negative. The D.C. Circuit Court has more positive results. Once in a while there is a case the Supreme Court doesn't like so they tend to concentrate on those cases. They also don't take some others and I think the D.C. Circuit has been given a fairly wide authority which is generally positive.

The Supreme Court is generally not friendly to FOIA cases.

Mr. DOBROVIR. In a lot of cases where the decision of the Supreme Court is to reverse or remand a decision that had favored the requester, as Patti said, they have announced opinions favorable to requesters. One was *NLRB* v. *Sears* which settled what is covered by exemption 5. Another is *Department of Air Force* v. *Rose,* which was quite helpful in subsequent cases in interpreting exemption 6.

While both those cases were reversals of decisions in favor of requesters, the language the Court used was, in fact, helpful to requesters.

Mr. **Plesser**. You are looking at three lawyers who hope to one day again to be in front of the Supreme Court so we are being somewhat restrained.

Mr. **Wise**. I understand one of the reasons the *Tax Analysts* case went to the Justice Department for the opinions was the difficulty of getting opinions from the district courts. Is this a problem? Does Congress need to take action to get the courts to provide copies of opinions in a more uniform way?

Mr. **Dobrovir**. I don't know whether you can address it, given article 3. The problems are practical problems, mainly related to the very restricted budgets the courts have. The last thing a court wants to spend money on is to assign personnel to deal with publishers who are trying to get hold of copies of decisions.

That is the problem *Tax Analysts* ran into. They would get a list of cases, make phone calls to the court clerks around the country; often the clerk would put their requests on the back burner because obviously he has more important things to do, in terms of processing the court's own records and getting decisions out to the parties.

I think the only way that effectively could help in terms of the release and dissemination of court opinions to the public, would be to provide budgetary support to the courts, specifically providing them with budget for personnel to do just that job.

Mr. **Wise**. Maybe some of the judges would like to contribute their proposed pay raise.

Mr. **Plesser**. It is an issue that some of the higher judicial agencies are looking at. The issue also implicated the Citator system and whether or not it is federally directed or the Citator system we have now which is established by someone other than the Federal Government.

It is a difficult issue. The courts are looking at it. I think it would be fine for Congress to look at the issues. I am not sure what the legislation would be at this point. But I think it is a worthwhile area for examination.

Mr. **Dobrovir**. There are experiments underway that the Judicial Conference has approved in terms of electroniciting the courts. The system involves putting opinions in a data base. Then you can punch them up on line, if you have the right modem and you are one of their subscribers.

If that became nationwide and covered all courts and courts of appeals, the problems would be effectively ended.

Mr. **Wise**. This full committee will have to take up the Paperwork Reduction Act during the year. I wanted to ask whether changes in the Paperwork Reduction Act would help with problems on FOIA.

Ms. **Goldman**. There are two separate issues, one having to do with records already there and the other with setting up a system for the use and dissemination of reports in a more affirmative way. I am not sure the paperwork reduction proposal will take care of FOIA problems. The bill you introduced is certainly a step in the right direction in terms of the values the Government should apply when it is disseminating information.

We applaud this bill. It is a step forward from what we have had in the past 3 or 4 years. The one hesitation we have about your proposal is the power that is given to OMB that is discretionary and nonreviewable. The standards are going to be set in a positive way but the implementation is a little iffy given where it is placed and the history of that agency.

We are lacking a bit of trust there.

Mr. **Plesser**. I think the Paperwork Reduction Act of course is up for reauthorization. I think it is important for it to have in it a dissemination mandate. As I tried to make clear in my statement there are two different issues. Whether or not it is public which is the FOIA issue and how that information is best disseminated, which is what I call the dissemination issue, I think there should be a very positive directive from Congress to agencies to disseminate that information and to do it as well electronically.

I think that will give impetus to some implementation problems we have been hearing today. I have some specific thoughts on how that can be done to maximize diversity and make that information available so that a lot of people can get involved and evaluate Government information needs. The public can have the benefit of a lot of competing services and diverse services.

I think there are some sensitive issues raised. By and large I support dissemination provisions along the lines that you have directed although as I noted I have some specific problems. I think it will go a long way to getting the message to the Justice Department and the Government that that information should be disseminated electronically.

Mr. **Dobrovir**. I will pass on the Federal paperwork reduction.

Mr. **Wise**. This panel has a wide range of experience and represents both the public interest and the private sector. I am trying to determine whether there are significant disagreements among you about the goals for the public information dissemination policy. I don't think that much difference.

Ms. **Goldman**. In terms of the way the Freedom of Information Act works, we are in agreement on the standards. At times there may be disagreement when a private company is in a privileged position for obtaining or disseminating information but I think those disagreements go to more specific issues on the dissemination side.

Mr. **Plesser**. On the freedom of information aspect, there is no disagreement I think. We all support it, a strong act, equal access. The clients I represent and to a certain extent Bill represents have been very sensitive about the timeliness of information as well. A lot of it is transactional information, like SEC information. Some of the people I represent are interested in getting instantaneous access to information.

EDGAR is a wonderful program because the public can see electronically corporate information filed with the SEC at the same time the analysts at the SEC are going to see it.

That is the kind of quantum leap in information service and activity we are looking at. I think we are all very positive about that.

Mr. **Dobrovir**. There may only be one positive disagreement. I think that it relates to the question of charges and costs. Very specifically, in the *Tax Analysts* case my client took the position that the Government should recover its costs in full. I know that a lot of information processors in the business would like to limit the Government to recovering only marginal costs.

We felt the taxpayer should not bear the burden and, in effect, subsidize commercial operations, even though our operation is nonprofit. We urged the Justice Department, and I told the Supreme Court in the oral argument that we were not trying to save money by going to the Department of Justice and that we were fully prepared to pay the 50 cents per page which the courts charge for copies, even though the Department of Justice charges only 10 cents a page.

Now the Justice Department is going to charge only 10 cents a page. We regret that. This is not an area where the Government should be subsidizing publishers operations, including our own.

Mr. PLESSER. I support the GAO position which has been developed primarily in context of the EDGAR program but it is very consistent with the FOIA fee structure where the Government can recover the full marginal cost of dissemination but not the capitalized or imbedded costs for developing the system.

GAO has said in the context of EDGAR that the Government cannot charge for capital costs. They can charge for the marginal costs, the costs of getting the information out to a particular individual. We believe the user should pay their full share of that with fee waivers for press groups and very similar to the structure that they have.

I think it would be unfortunate if the Government starts amortizing the hardware and software costs in developing systems for user fees. It will probably create the wrong incentives and I think it would be a mistake although I think it would be important, as Bill has said, for the users of those systems to be subject to pay the full marginal cost of disseminating that information.

Mr. WISE. Mr. English.

Mr. ENGLISH. Thank you, Mr. Chairman. One question I kind of wondered about for some time and I suppose with such a distinguished panel this is my opportunity to ask it.

I don't like to put attorneys in difficult positions but we have talked about the law and talked about a lot of very sophisticated technicalities with regard to the law, taking cases to the Supreme Court, what about the unsophisticated requester, the fellow who probably doesn't have the resources, the wherewithal to go to the Supreme Court or to take them to court at all? Should the law address that particular requester's needs in some way? Is there some way we can get at this without going through the court proceedings and expensive time-consuming efforts to try to make various points of law?

I realize a lot of that may be determined by the particular administration in power and its willingness to abide by the spirit of law as well as the letter. So I would like each of you to kind of address that and speak against your chosen position and tell us how to do this without lawyers.

Ms. GOLDMAN. The act has built into it a step before going to court, the administrative appeal. My experience is that a lot of these issues are resolved at that stage. Once it gets to the general counsel's office on appeal a harder look is taken and a determination is often made that the information is covered—by the act.

So to the extent the appeals stage works it can keep requesters out of court. Often to make a meaningful appeal a requester needs to contact groups such as ours in Washington and elsewhere who are more familiar with the act so they can make the kind of claims they need to make.

Mr. **English**. Let's take my home town newspaper in Cordell, OK. We are not likely to be experts on the Freedom of Information Act here. Should we, in fact, maybe include some provisions that would require when the Freedom of Information Act is denied, require that particular—they are not likely to know FOIA groups—they might contact the Oklahoma Press Association who might contact people in Washington. It is still quite frankly not likely.

I wonder if there is a procedure that should include the unsophisticated requester so he understands what the procedures and steps are and see if we cannot simplify this process in some way, so he doesn't have to write a 20-page legal brief in order to appeal the decision on his request. Does that make any sense?

Ms. **Goldman**. I recall a hearing a couple years ago, where we were looking at alternative dispute resolution mechanisms, and there certainly is a need for there to be an institutionalized way to provide the information that my organization provides to requesters. The problem seems to be where to lodge that in the Government.

There is a certain amount of mistrust from some of the most logical places in the executive branch. For example, the guidance from the Office of Information and Privacy in the Justice Department, has often been very political and they have taken positions in litigation that are adverse to requesters. It would be useful to have a requester assistance service in the Government, but I don't know where it would be placed to be an assistance to the requester instead of a restatement of a Government position.

Mr. **English**. What about this idea of requiring, when a request is denied, that the requester be informed of the steps that he must take to make an appeal or the fact there is such a place to make such an appeal?

Ms. **Goldman**. That is already a requirement. That doesn't tell the requester how to make the arguments on appeal and whether the agency is really saying something that is indefensible or how to challenge it.

Mr. **Plesser**. One response is to require the agency to put out the booklets this committee has put out, to have that attached to denials that go out.

Mr. **English**. You are talking about, of course, the best seller of the Government Operations Committee.

Mr. **Plesser**. That is a very fancy, eye-catching cover. There are two additional issues I would like to put on the table. One of the problems with the agency appellate process is that—and I wrote my statement fairly carefully on this point—is that they don't have to tell you the reasons why they are withholding on the initial request, and when you are doing an agency appeal you really have to guess the reasons why that information is being withheld. It is not until they go into court that they have to come up with what we call a Vaughn versus Rosen index or a factual showing of why the information isn't exempt. The burden doesn't really shift to them until they get into court.

If there were some way the agencies could be required, not only in terms of process but in terms of reasons, to tell the requester at an earlier stage, that would be better.

Let me also say a lot has to do with policy way at the top. There were concerns of freedom of information as during the Carter years. There were Justice Department policies, directives from the Attorney General that said, particularly in certain categories of exemptions, particularly the fifth exemption, internal information, it says: "Yes, the exemption may be there, and you may apply it, but don't use it unless it is going to really interfere with the agency doing its job," and it really encouraged agencies up and down the line to disclose more information.

I think some positive concepts like that will go a long way, so your constituents won't have to fight so much.

Mr. ENGLISH. But that is the attitude of the administration.

Mr. PLESSER. That is right.

Mr. ENGLISH. And I have not, at least in recent Presidential campaigns, heard the issue of the Freedom of Information Act elevated to the point that we have got the majority of this people making decisions on which administration is going to be more open in providing the voters—so it is probably going to be left up to the Congress to make requirements. I think we are going to have to assume that we are going to continue to, the information is going to continue to be forced from most administrations kicking and screaming. They don't want to do it?

Mr. PLESSER. I think that is true. But as to public information, where the issue of public availability has been decided, I think the legislation Mr. Conyers and Mr. Wise are looking at will go a long way in creating a positive attitude and requirements for the disclosure of that information in a more regular and more automatic manner.

Mr. DOBROVIR There are a couple points I would like to add. First of all, practice varies among agencies, and these agencies like, for example, the FBI, that have been battered over the head by the courts and press with respect to their disclosure policies for 20 some odd years have evolved a process that is pretty much scrutinized and by which anyone requesting, for example, his own FBI records will get them after a probable unconscionable delay and with an awful lot of deletions. But the agency has learned how to deal with freedom of information requests to get out the information it knows it has to produce.

Other agencies with much less experience, for example, some agencies of the Department of Defense, are quite unfamiliar with the act, and if you mentioned the Freedom of Information Act to them, they say, "What are you talking about? We are the Defense Department, this is sensitive data."

"Yes, but it isn't classified."

"We don't want to give it to you."

"But that is not the point, sir," so on and so forth.

The person out there in Oklahoma, one of the problems he faces, he wants to get information from the Government. He doesn't know who to write to. The agencies all have freedom of information officers, but I doubt if a letter addressed to "Freedom of Information Officer, Department of Energy"—I don't know whether it is going to get to the right person or not. That is one sort of practical stumbling block. How do you solve that?

In terms of the press, we often see in the papers I read references like "obtained by the Washington Post" or "by the Des Moines Register," or obtained by whatever press organization under the Freedom of Information Act, and revealing all kinds of things. For example, in connection with the recent revelations about scandals at HUD, a lot of the information apparently has been uncovered by enterprising reporters using the Freedom of Information Act.

I would suggest that perhaps you invite some of those press organizations to come up here and tell you about their experience, how they do it, and get their suggestions on how their experience can be used by the ordinary person out there in Cordell, OK, or the Cordell paper.

Mr. **English**. I guess the point I am making is that shouldn't a letter written to the Department of Energy, to the freedom of information officer in Washington, DC, shouldn't that automatically be referred to the proper person?

Mr. **Dobrovir** Absolutely.

Mr. **English**. Shouldn't that person then be required to respond in a fashion that specifically identifies, as we have heard, what reason there is for denying the request? You know, you put the stamp on upside down, or whatever the reason is that they may come up, and some may have gone that far. But the point I am getting at is there has got to be some way for the unsophisticated requester to be given some consideration, and shouldn't we build in certain rights in this thing so that he can understand in very plain English, here are the steps you have to take to make either an FOIA request or to appeal your FOIA request and the specific reasons it was turned down?

Mr. **Dobrovir** Let's suppose the request gets to the officer and he knows he has 10 days to answer, he looks for the material, he decides it is covered by exemption 5, so he writes a letter back saying, "Your request is denied, Exemption 5." They ordinarily will cite the section of the act. "If you want to appeal, you have to appeal within 30 days under the agency's regulations, and this is the address. In your appeal you should state your reasons why you think you are entitled to the material."

This comes back to an ordinary person. He says, "Exemption 5? What is that? Where do I find the language? How do I know what he is talking about?" I think that is one of the problems you are getting at, Congressman.

Mr. **English**. That is right. I think we have to figure out some way to go beyond that to make this thing easier to work with rather than more difficult. I just have difficulty with the concept that in order for the Freedom of Information Act to work, we have got to have a battery of attorneys ready to, along with the resources, to battle this thing through the court system. That just doesn't seem to me to be quite in the spirit that we had in mind when we talk about the Freedom of Information Act and giving citizens access to their Government and information and trying to understand how it works.

I would be interested in any recommendations you all might have. Would you give that some thought, as to how that process should work, if there is some way we could write it into law and make it work easier that way?

Thank you very much, Mr. Chairman.

Mr. WISE. Mr. McCandless.

Mr. MCCANDLESS. Thank you, Mr. Chairman. I apologize to the panel and the committee. After a few days' absence to find a water leak on the eighth floor of a condominium takes a certain priority. I do not have any questions for our panel.

Mr. WISE. The question we are all asking is: Did you find it?

Mr. MCCANDLESS. It is under control. Maybe we know a little Freedom of Information Act on how they built the building.

Mr. WISE. I want to thank the panel very much. You have given us a lot to discuss and also to think about. I think it is important we all keep, as they say, stay in touch.

The next panel will be Paul Massa, president of Congressional Information Service; P. James Terragno, president, Maxwell Online; and Henry Perritt, professor, Villanova Law School.

As you approach the table, it is the practice of this subcommittee to swear all witnesses in. Do you have any objections to that? If not stand and raise your right hands.

[Witnesses sworn.]

Mr. WISE. I notice Joe Ebersole is accompanying you, is that correct?

I would ask you to summarize your testimony, and we will go in the order I named you. Mr. Massa.

STATEMENT OF PAUL MASSA, PRESIDENT, CONGRESSIONAL INFORMATION SERVICE, ACCOMPANIED BY JOSEPH EBERSOLE

Mr. MASSA. I appreciate the opportunity of having the opportunity of meeting with you and discussing the subject of the dissemination of Federal information. That is something that is of great concern to my company.

As you know, the Office of Technology Assessment has recently completed a study, and that is entitled, "Informing the Nation." I have the summary here. I also have the full study. That study was about 2½ years in the making, and 21 people served as an advisory panel for that study, and I was a member of that panel.

The study has been promoted by its authors to various groups inside and outside of Government, and since the study provided really no mechanism for a dissenting view, I would like to devote my testimony this morning to a dissenting view.

There are many people who have said good things about the study, and I would like to say there are many things in it that are useful and praiseworthy. Certainly the chapter on FOIA is a good example of that. However, I will be very blunt and say there is also a lot of misinformation in the study. There is a lot of information in it that is incorrect, and there is also a lot of information in it that is subject to misinterpretation.

Unfortunately, as the study progressed, it became apparent to many of us that the OTA staff didn't have a whole lot of use for the contributions of the private sector in the deliberations of the sessions in which we met, and I would submit the American public has been relatively well served by what the private sector has done with respect to the dissemination of Federal information. The simple fact is that most Americans receive information through intermediaries, not only intermediaries within the information industry per se, but through radio, through television, through attorneys, through financial information specialists or trade associations, and the list goes on and on.

The private information industry has a multiplier effect on the economy that is very good. It has a very positive effect. It is also one of the industries, one of the all-too-few industries in which America has a leadership position with regard to export, which should be the respective roles of the private sector and the Government with regard to the dissemination of Federal information.

First of all, it is our belief, and when I say our belief, I am speaking of Congressional Information Service, which is a private company, that the Federal Government should maintain its own records. That is its primary obligation. Secondly, it is the obligation of the Government to make sure those records are preserved indefinitely; and, thirdly, and perhaps most importantly, that those records are made available in a reasonably convenient form to the American public.

What is the role of the private sector? The private sector has an obligation, and it has taken on that obligation, to make sure there are various kinds of more sophisticated, narrowly defined access systems for that information. In effect, the private sector complements what the Government does and has an obligation to do. Most Government information is distributed in print. However, there are many electronic files that exist for the purposes of editing and composition.

Meaningful access to public information and meaningful access to those electronic files involves a lot more than simply creating electronic manuscripts. If I can use for an example, the U.S. Government Printing Office, which has taken advantage of modern computer technology for the production of the Congressional Record, it markets tapes once those tapes are created to produce the record in print form. Yet, these tapes in their raw form are not usable to the American public.

There are three firms that have made them usable: Media Data Inc., LEGISLATE, and Congressional Quarterly. All of them competitively distribute very sophisticated systems for accessing the Congressional Record. Each of them serves slightly different markets, but they are all basically competitive.

But this was possible only after those firms made very, very substantial investments, up-front investments in creating access systems and creating software and determining what it is really that the public wanted and how it wanted it. There was user training involved, and there is an ongoing process of user support

The GPO shouldn't get into the business of developing an electronic system when three of them already exist out there. Specifically, it seems to me that the GPO should spend its time improving, in fact, the production of the Congressional Record.

If I could use the example of the bound version of the Congressional Record and the Congressional Record Index, both of which are paper products and both of which are years behind schedule. This is, quite frankly, difficult to understand why, but they are. Those wishing to acquire basic Government information have a lot of tools at their disposal. The monthly catalogs, the Federal Register, the Government Reports Announcements, and Index Journal from NTIS. Those who require more sophisticated and narrowly focused access systems have those publications available from the private sector: from LEXIS; from the American Statistics Index that we produce; and many, many other products.

My point is simply this: those that want narrowly focused and highly specialized research tools should pay for them. The Government, meaning ultimately the taxpayer of this country, shouldn't get into the business of meeting that kind of specialized need.

What about the cost for enhanced electronic dissemination? This report generally assumes that electronic information dissemination is going to save the Government money. Those of us who are in the business of electronic dissemination of information of any kind can tell you there are a lot of advantages to it, but usually cost savings isn't one of them. And if I can use as an example a CD-ROM, physical cost of the material in this disk probably doesn't exceed a dollar. It is nothing more than a little bit of plastic and aluminum, but the total cost involved in creating an information system that allows you to use the material off this disk runs into hundreds of thousands of dollars. Those are the investments that have to be made before you end up with an informational system.

If I can give you an example of what I consider to be useless cost data that appears in this report, it appears on page 164 in a table headed "Estimated Cost Per Library Per Year For the Congressional Record." The table says that the GPO can distribute the Congressional Record through an electronic information system for $10.05. It says that the same cost for microfiche is $83.62, and that the cost for distributing it in bound paper form is $632.83.

Well, with regard to the $10.05, I say balderdash. There's no way that's going to be done. That table includes absolutely no cost for purchasing, for developing software, for putting the Congressional Record into a usable form that will make it available for electronic retrieval.

In the column above the table, a reader is told the mastering costs for this system—the term "mastering cost" means creating the very first product by which you can create others—are going to be about $1,700, but there is no mention made whatsoever of the substantial costs made to edit the files, to create a data base, to test the data base with retrievable software, to encode the text and structure data in the premastering process, to create installation files, to prepare user documentation, and the list goes on and on.

There is also a figure in this report that says it is going to cost 50 cents per copy for the user documentation that is necessary. That is ludicrous. There is no way you can prepare user documentation for 50 cents a copy. There is no mention of the extensive support system GPO is going to have to create and develop in order to prevent total chaos among the users of the system.

What happens when the system simply doesn't work? Where does the librarian go when the system doesn't work? Whom does she contact, where does the user support come from? None of that is presented in this report, and none of those costs are addressed.

By any honest standard, the costs associated with each CD-ROM copy that are going to be incurred for distributing the Congressional Record are going to be on the order of 100 times what is presented in this table. And at that, even this report admits that the life cycler of CD-ROM is likely to be considerably less than microforms. Electronic distribution has a lot of advantages, but cost savings and proven durability are not among them if you are talking about putting it on CD-ROM.

What about the prices for advanced information technology? This report returns again and again to the notion that somehow the U.S. Government is going to be able to produce sophisticated informational products and services at a cost way below what the private sector is providing.

With regard to the NTIS organization referred to in the study, there is no basis whatsoever for their conclusion that they could in fact offer products cheaper than the private sector is producing. And that same inaccurate logic is evident in the paragraph in the report that refers to the possibility of the Superintendent of Documents becoming an online distributor of Federal information.

I would like to quote from that, if I may. "If the Sup Docs decided to sell the Congressional Record on-line, the Record could be established as a file on The Source on CompuServe, on Easylink and/or DIALOG. This would minimize GPO's capital investment until experience with actual demand levels and patterns could be analyzed."

I would ask this committee, by what distorted sense of fairness, and indeed by what authority, GPO should be permitted to get into the business of private-sector competition until it has enough experience with private-sector distribution systems to go into competition with them? How would GPO's experience enable it to somehow or other come up with a system of distribution that is going to cost less than the three firms who are already in that business and have every reason to operate as competitively as they can?

Interestingly enough, on that same page that I have just quoted from, the report even concedes, it may not be possible for the GPO to pay for both the startup costs of electronic dissemination as well as its current ongoing operation.

I would like to make one point clear here about my feelings of NTIS and GPO. They are both very valuable organizations. They perform valuable functions, and with regard to NTIS in particular, we in the information industry have been in the forefront of those who have said it should remain a Government agency. It should not be turned over to the private sectors.

However, both of those agencies should continue to do what they do best instead of trying to preempt markets that have been developed by the private sector with the illusory promise that somehow or other they are going to develop publications and products that are going to be cheaper and better.

I would like to turn for a moment to a comment made in this report about the company I head, Congressional Information Service, and I will quote from the report once again: "Congressional Information Service (CIS) offers extensive indexing and abstracting of congressional documents, sells hard-copy indexes to congressional information and provides on-line indexing via DIALOG. The CIS indexes have become the standard source and, in fact, are used by GPO as a master list."

I am quite pleased to hear that last comment, that we are considered the standard source, and that we in fact are used as the standard master list by GPO. Despite that accurate and complimentary remark in this report, one reads this statement: "The introduction of electronic media to congressional operations presents congress with the opportunity to improve public access to Congressional materials . . . in part through better tracking and indexing of Congressional information."

I have to tell you I am outraged that statement is in a document that has my name on it. I would like to hear personally from anyone in the Government, from any Government documents librarian or from any member of the documents using public who believes that existing indexes to congressional publications are inadequate and that we should get into the business of spending more tax dollars providing better access. There is no one who knows Government documents better than the hard-working documents librarians within the depository library system, and I would suggest that you talk directly to them.

On what basis is it asserted that the mere introduction of electronic media would produce better indexing than the demonstrably superior product that is already available? And where is the justification for undertaking that effort? I would like to quote something else from this report. "Congress also may wish to develop, as part of an overall policy a clear intent as to the role of private vendors. Presumably vendors would, in general, be able to obtain any publicly available Congressional information . . ."

Well, that access to public information is a right that we have along with all other Americans, and that right should not be conditioned in a U.S. Government report with words like "presumably" and "in general."

As I explained to the OTA project director, Fred Wood, in a letter containing my comments on this draft report in its final form, when the CIS index began publications in 1970, we didn't go to Congress to seek its intent as to what our role should be.

On page 190, there is a disturbing discussion based on the authors' anxieties, that information maintained by the vendors will not match that found in the bound Congressional Record.

Well, quite apart from the fact that private vendors have every incentive to present an accurate version of what happens in Congress, if they are to maintain their own credibility in a free market, it is not the business of the Congress, and it hardly needs saying in this committee, to police the subsequent use of the information that it generates.

And I would like to quote from this subcommittee's own report which is entitled here, "Electronic Collection and Dissemination of Information, the 99th Congress, House Report 99-560," in which this subcommittee said, "Any information can always be used in some way that may not have been intended by its creator. This possibility does not justify government control over public domain data."

There is more I can give in my view, but in the interest of time, I will conclude.

None of my letters to Fred Wood were ever answered. I would like to make a prediction. If there is a massive transition to electronic dissemination along the lines of reasoning that we have seen over the past 2 years coming out of OTA and the Joint Committee on Printing, we are going to have three things happen: One is vastly increased costs, the second is you are going to have unreliable service, and the third is it is going to have a very chilling effect on the private sector that will result in curtailed access of Federal information.

As this subcommittee asserted in the record that I referred to earlier, and this is a quote from your report:

> Fair competition means that an agency should limit the services that it offers to the public and should leave the private sector to provide additional value-added services.

What the OTA report should have done, but what it didn't do, was to look for ways to take advantage of the private sector's ability to disseminate Federal information, but it didn't do that.

Thank you.

Mr. WISE. Thank you.

[The prepared statement of Mr. Massa follows:]

Statement of Paul P. Massa
Before
Subcommittee on Government Information, Justice, and Agriculture
Committee on Government Operations
U.S. House of Representatives
July 11, 1989

Introduction

I appreciate the opportunity to testify before this subcommittee today. As chief executive of Congressional Information Service, a firm that produces reference tools for research on hearings and other congressional publications, I take special pride in participating in this vital part of our federal legislative process. I am especially pleased because these hearings are about federal information policy. This is a topic that concerns not only access to government information having scientific and economic value, but also the day-to-day operation of our democratic republic, and ultimately the exercise of our fundamental American rights of freedom of speech and political expression.

As you know, the Office of Technology Assessment recently concluded an ambitious study of issues relating to the collection, processing, and dissemination of federal information. I served on the advisory panel for that study, along with 21 other persons. Because the study's final report, called *Informing the Nation: Federal Information Dissemination in the Electronic Age*, was more than two years in the making, because it has been promoted by its authors before various audiences both inside and outside the government, and, finally, because the study did not provide for registration and dissemination of dissenting views, I would like to devote my testimony today to a critique of that report.

Let me begin by saying that there are parts of *Informing the Nation* that are praiseworthy. The useful synopsis of court decisions relating to treatment of electronic information under the Freedom of Information Act stands as an example. Unfortunately, the reader also encounters much misinformation in the report, especially in the core chapters that treat the major themes found in the report's summary. Moreover, much of whatever is true in those chapters is either irrelevant or wrongly interpreted, or both.

At the outset, I shared the optimism of everyone associated with the study that it would produce some well-supported, original ideas for improving federal information dissemination. In July, 1987, while the study was still in its early stages, I concluded a set of comments to its director as follows:

> My hope is that we can attain the future that our optimism holds before us by taking full account of the creative participation that will be required from many sources, both within and outside of government. In this way we can develop a federal information policy that is flexible and responsive rather than controlling, one that is driven not by technology per se, nor by the pre-emption of the competition that is essential for innovation and for our very freedom, but rather by a sense of the urgency of involving all of the information resources of our society to meet the genuine needs of the American people.

Unfortunately, as the study progressed, it became increasingly obvious that the OTA staff had little use for the contributions of the minority of advisory board members chosen from the private-sector information industry. As the report took form first in working papers, then in a draft report, and lastly in the published report, some of the more egregious statements contained in earlier drafts were excised. Nevertheless, the final report retains an overall tone of indifference to the conditions needed to promote private-sector investment in information access and delivery systems. This is both ironic and, frankly, alarming, since it is the private sector that produces the best reference and retrieval systems for federal information that can be obtained today.

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The authors clearly intended the scope of private-sector activity in the dissemination of federal information to be one of the principal themes of the report. In the summary chapter, one of the "problems and challenges" cited is that "Technological advances complicate the federal government's relationships with the commercial information industry" (p.9). Later in the summary, the "private sector role in federal information dissemination" is cited as one of three major "crosscutting themes" in the report (p. 22).

Yet, throughout the report, references to the private sector as a disseminator of federal information are usually marked by qualifications that portray the private sector as little more than an interest group, whose concerns are to be brokered by Congress along with those of various other interests. The report only sporadically acknowledges that: (1) the private sector is involved in an integral and pervasive way in the dissemination of federal information; and (2) the part of the information industry that disseminates federal information is a national asset that should be encouraged rather than restrained.

The Private Sector: The Main Engine of the Information Economy

In our political and economic system, most market demands -- including those in which the public interest is quite strong -- are satisfied by the private sector. In industry after industry, we rely upon free markets to permit both the expression of demand and the mobilization of capital, labor, and managerial talent to produce goods and services to satisfy that demand.

Like all products in free markets, advanced information systems and services are sold at prices determined by cost and by competition. Even if an information system has no direct competition, downward pressure on price is still exerted by other information products that may serve as partial substitutes, as well as by the competitive potential of new suppliers, who are always poised to enter any free market when prices are perceived as excessive. Another characteristic that the market for advanced information systems shares with many other markets is the ability to generate funds for research a continuing expenses of any supplier that is in business for the long term.

Private-sector systems that distribute data from the Educational Resources Information Center (ERIC) offer an example of these free-market principles in operation. The basic data, which is compiled by 16 specialized clearinghouses that are affiliated with universities or professional societies and that work under the direction of the Department of Education, is marketed by several private firms in microform, on compact disc, and as an online database. When the database was first published on compact disc, it was enthusiastically received within the library and educational communities. Within a short time, two other organizations developed similar products, and prices fell by half over a six-month period.

I submit that the American public has been relatively well served to date by the private sector's application of emerging technological capabilities to practical needs for government information. The simple fact is that most Americans rely on private-sector intermediaries -- encompassing not only the information publishing industry, but also radio, television, trade associations, financial industry professionals, lawyers, and many others -- as their principal means of access to federal information. Table 5-11 on p.115 of Informing the Nation illustrates this point with data on the sources of federal information used by scientific and technical associations. In response to a survey by the General Accounting Office, associations mentioned four different classes of private-sector products as more frequently used sources of federal information than any direct federal source. Overall, only 10 of the 26 sources mentioned were federal sources.

The private sector has pioneered the use of electronic information technology for distribution of federal information. The array of commercial electronic services now in place that analyze, organize, and enrich information originating in the federal government generates revenues of hundreds of millions of dollars yearly. Moreover, these revenues are highly leveraged in their impact on total economic activity and social welfare. The information purchased with them becomes an essential input for the efficient production and utilization of a vast number of other goods and services. Market-responsive private information services thereby exert a "multiplier effect" that has a large and favorable impact upon the entire American economy. Moreover, private electronic information services are a significant export industry, and one of the all-too-few industries in which the United States enjoys a substantial margin of overall leadership in technological innovation and successful commercial applications.

The Complementary Relationship of the Government and the Information Industry

What should be the respective roles of the federal government and of the private sector in the distribution of federal information? Briefly, the proper role of the government is to meet its internal information needs, to preserve its records, and to make them available in a form that is both reasonably convenient and reasonably economical. The role of private sector information enterprises is to complement and extend the official distribution system by responding to the public need for sophisticated tools for acquisition, storage, retrieval, analysis, and processing of government information.

I would like to focus momentarily on congressional information to illustrate the respective services performed by the government and the private sector. Traditionally, government information -- especially congressional information -- has been issued in paper form. Even if this information now also exists as electronic files for purposes of editing and composition, most types of documents will continue to be used by Congress chiefly in paper. Examples are the hearings, prints, and reports of congressional committees.

Nevertheless, Congress also issues much information which, because it requires updating or because it lends itself readily to further manipulation by computer, appears mainly in electronic form. Examples are the LEGIS system, containing bill status information, and the SCORPIO system, which includes issues briefs, public opinion survey results, and other files maintained by the Congressional Research Service (CRS).

Much of the information generated by Congress in electronic form is confidential; most CRS databases, for example, are accessible only to members of Congress and their staffs. Meaningful public access to the remaining data in electronic form requires much more than production of "electronic manuscripts."

The possibilities for electronic dissemination depend heavily upon such capabilities as the acquisition and maintenance of sophisticated search software, adherence to intricate production schedules, ultra-high quality control standards, and full-time user support. The investments necessary to develop and support these capabilities are large. They can be managed only by organizations with access to substantial amounts of capital, and which are prepared to incur the risks of complete failure or of operating at a loss for an extended period of time. Moreover, for there to be any chance of success, the producer of an electronic information system must be exquisitely attuned to the diverse and changing needs of the system's users, and quite flexible in responding to those needs.

Congress, through the Government Printing Office, has taken advantage of advancing computer technology in the production of the Congressional Record. As a by-product of the production process, it markets magnetic tapes containing all the information in the printed Record. But these tapes are not suitable for access by the general public. Perceiving that their database development and marketing skills could be employed to make the Congressional Record available beyond Capitol Hill in electronic form, three firms -- Mead Data Central, Inc., LEGI-SLATE, and Congressional Quarterly, Inc. -- all competively distribute the Congressional Record through online systems.

The best way that the GPO could contribute to even better access to the Record would not be to spend money developing a parallel system. Rather, the proper GPO role would be to apply all available resources -- including more electronic data processing technology, if appropriate --to timely production of the Record. For example, access by the public to the Record would be greatly improved if the bound version of the Record and the Congressional Record Index were not both several years behind schedule.

The development of robust markets for advanced information systems serves not only the interests of the individual participants in any given transaction, but also the larger public interest. A particularly important benefit of market-responsive distribution of federal information through free-market suppliers is that it guarantees a multiplicity of sources of government information. As I wrote to the OTA study's principal author in the July 1987 comments previously cited:

> The private-sector information industry regularly puts at risk substantial amounts of capital to meet the demand for ever-better access to government information. Owing in part to these investments, American citizens have a multiplicity of sources and formats to which they can turn for government information. The traditions of open access to federal information and of a free market in "value-added" products to meet special needs not only contribute to our economic strength, but also form one of our best guarantees that the flow of federal information will never be constricted by selective release through official channels only.

Those wishing to acquire basic government information have at their disposal such tools as the printed *Monthly Catalog*, the *Federal Register*, and NTIS's *Government Reports, Announcements, and Index Journal*, to name three of the numerous federal catalogs, bibliographies, and databases that are prepared for public use. Those requiring a more detailed, intensive search of federal information output may prefer to use such private-sector reference systems as LEXIS, *BNA Online*, or the *American Statistics Index.*

The point is this: those who want significantly refined, narrowly focused, highly specialized research tools should pay for them. The government -- meaning ultimately the taxpayer -- should not subsidize these specialized needs.

The Costs of Enhanced Electronic Dissemination

One unexamined -- and generally erroneous -- assumption in the report is that electronic information dissemination will save the government money. There are indeed advantages to electronic dissemination for the information user, and perhaps for the distributor as well, but cost savings is not usually one of them. By employing figures that calculate little more than the incremental costs of the physical media employed in electronic publishing, the authors display a naivete that sorely tempts many of us in the publishing industry to dismiss the entire study out of hand.

The costs of the physical material in this CD-ROM -- mostly plastic and aluminum -- probably do not exceed $1.00. Yet the total cost involved in creating a superior system for accessing the information on this disc, together with the costs for organizing and structuring the information, can run into the hundreds of thousands of dollars.

A prime example of OTA cost data that is deceptive -- and therefore worse than useless -- can be found in Table 7-1 on p. 163. The table is entitled "Estimated Costs Per Library Per Year for Distribution of the Bound Congressional Record to Depository Libraries, Various Formats." The table presents the cost of distributing one year of the Congressional Record on CD-ROM as $10.05 per depository library, compared to $83.62 for microfiche distribution and $632.83 for paper distribution. The table includes absolutely no costs for purchasing or developing software, or for putting the Congressional Record into a form that will make it available for electronic retrieval.

In the column above the table, the reader is told that the mastering costs would be about $1,700. But no mention is made of the substantial personnel costs to edit text files, create a database, test the database with retrieval software, encode the text and data structures in the premastering process, create installation files, and prepare documentation, to name just some of the more important and costlier steps. On the preceding page, it is stated that "GPO management has determined that GPO staff will not develop the needed retrieval software itself, but will purchase the software from a vendor." Yet, there is no mention of software costs in the table.

The figure of $0.50 per copy for documentation is ludicrous. Also, there is no mention of the extensive support that GPO will have to provide if total chaos is not to ensue among recipients and users of the proposed product. For example, who helps libraries when the computer will not access the compact disc? There are dozens of reasons why this occurs, and, given the state of the art, it will occur in almost every depository library from time to time, and often because of factors that only the disc's producer could pinpoint and correct.

The report contains frequent and approving references to the "information life cycle" concept (see, for example, p. 164). I suggest that, by any honest standard, the life cycle cost of each and every CD-ROM copy issued by the GPO is likely to be on the order of one hundred times the cost presented in Table 7-1, and on the order of ten times the cost of the same material in microfiche. And at that, information distributed on CD-ROM would probably have a shorter useable life than the same information issued in microform, as the report concedes on p. 162. Electronic distribution has its virtues, but cost savings and proven durability are not among them.

Prices of Advanced Information Products

The OTA report returns again and again to the notion that the government can somehow develop sophisticated information products and services at lower cost than the private sector. I do not argue that the government could never have a compelling reason to develop a product such as an online database or searchable compact disc. But the presumption should be that the private sector is the best source for such products within our system of limited government and decentralized economic decision-making. As I wrote to OTA project director Fred Wood in a letter dated November 17, 1987:

> If the narrow interests of the government are put first, along with the short-term interests of various sectors of the public in tax-subsidized pricing of products and services that could be provided in a free market, expediency could justify government usurpation of any sector of the economy.

Moreover, in areas where the OTA report suggests that the government emulate private sector information products, chances of success appear to be slender, while prospects for waste of taxpayer funds appear to be substantial. For example, the report endorses the concept of an "Electronic Document System" at the National Technical Information Service. Part of the reason that OTA concludes that this would be a good idea is that, citing an NTIS estimate, it asserts that the private sector generates revenue of $11-12 million from "adding value to or re-marketing NTIS products" (p. 110). OTA goes on to suggest that NTIS is deprived of this revenue earned through the creative endeavor of the private sector, with the effect of "discouraging" NTIS from improving its overall operations.

The study offers no basis for concluding that, just because the private sector has been able to generate a certain amount of revenue by creating specialized electronic retrieval products, NTIS could or should expect the same revenues. Nor is there any reason to believe that, even if the same amount of revenues were generated, NTIS would not lose money on the operation. Indeed, NTIS's track record argues the opposite. Finally, there is no rationale for appropriating this market: there is no consideration of fair play, and there is not even any reason to believe that NTIS could offer electronic products at prices any cheaper than those of the private-sector products that already exist.

Although it houses a rich store of federal scientific and technical information, NTIS' unit sales are only about half of what they were in 1980.

NTIS' response to this decline has been to raise prices steeply over that interval -- by 69%, in the case of paper products, and even more for microfiche, according to Table 5-6 on p. 111 of the OTA report.

NTIS's accounting practices show that it operates roughly in a "break-even" mode. However, these practices tend to mask a deteriorating financial condition. In documents distributed in early 1988 in connection with a conference pertaining to the possible sale of NTIS, it was revealed that NTIS has a negative net worth, and has depleted more than $7 million in cash that customers had placed in deposit accounts.

The same feeble logic and arrogance concerning appropriation of privately developed markets is evident on p. 103-104, where, in a paragraph on the possibility of the Government Printing Office's Superintendent of Documents becoming an online database publisher, it is serenely suggested that

> ...if Supdocs decided to sell the Congressional Record online, the Record could be established as a file on The Source, CompuServe, Easylink, and/or Dialog. This would minimize GPO's capital investment until experience with actual demand levels and patterns could be analyzed.

By what distorted concept of fairness -- indeed, by what authority -- would GPO be permitted to use these private-sector distribution systems until it learns enough to go into subsidized competition with them and with existing electronic versions of the Congressional Record? And how would GPO's acquisition of "experience with actual demand levels and patterns" enable it to offer lower prices than private vendors that already have every incentive to operate as efficiently as possible?

Interestingly enough, on the same page as the modest proposal I just read, one finds OTA conceding that the funding requirements for electronic technology would detract from funding for better execution of the work that GPO now does, and that it may not be possible to pay for both the start-up of electronic dissemination and its ongoing operation:

> GPO may have to make some difficult choices between investment in traditional versus electronic publishing technology, and between capital investment versus the training and recruitment of personnel to apply the technology." (p. 104)

Both NTIS and GPO currently perform valuable functions. In the case of NTIS, the information industry has been in the forefront of those arguing that it should remain a government agency. However, both agencies should concentrate their efforts on doing better that which each now does, instead of trying to pre-empt markets developed by the private sector with the illusory promise of high quality electronic products at low prices.

Other Threats To Private-Sector Distribution

A prime example of the authors' disdain for the capability of the private sector to serve public purposes -- and of insensitivity to both the conditions necessary for the continued prosperity of private-sector enterprise and to judicious use of taxpayers' funds -- is found in Chapter 8. On p. 187 one learns:

> ...Congressional Information Service (CIS)...offers extensive indexing and abstracting of congressional documents, sells hard copy indexes to congressional information, and provides online indexing via DIALOG. The CIS indexes have become the standard source and, in fact, are used by GPO as a master list.

Furthermore, in the September 1987 contract report "Public Access to Congressional Information in the Technological Age: Case Studies" written under contract by Stephen Frantzich, the study's principal contractor on congressional information dissemination (see Appendix C, Item 2), it is stated that:

> Until 1970 content access to congressional committee publications was hampered by inadequate tools for identifying relevant publications and locating the material of interest within them. The incomplete indexing and selective dissemination of committee materials led to the creation of the Congressional Information Service (CIS). CIS, a commercial indexing and microfiche production company, acquires copies of all committee material (hearings, prints, reports and documents)...evaluates the entire publication and indexes it by subject, bill number, bill name, author, witness, etc....The CIS indexes are created in electronic form, and are available on-line via Dialog. (p. 58)

Yet on page 201 of the report one reads:

> The introduction of electronic media to congressional operations presents Congress with the opportunity to improve public access to congressional materials...in part through better tracking and indexing of congressional information.

On what basis is it asserted that the mere introduction of electronic media would produce better indexing than the demonstrably superior product that is already available? And where is the justification for undertaking such an effort? On p. 184 one reads:

> Congress also may wish to develop, as part of an overall policy, a clear intent as to the role of private vendors. Presumably vendors would, in general, be able to obtain any publicly available congressional information, as they already do to some extent now.

This is one of several unsettling hints in the report that Congress should have sole and ultimate control of the manner in which information it generates is distributed. Access by vendors to congressional information should not be conditioned by "presumably," and "in general"; it is in fact a right, one which we enjoy along with all other Americans. As I explained to the OTA project director in a letter containing my comments on the draft final report dated June 3, 1988:

> When the CIS/Index began publication in 1970, we did not go to Congress to seek its "intent" as to our "role." Nor will we remain silent today when such fatuous yet possibly dangerous notions are put forth for serious discussion.

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Not just as information publishers, but also as concerned citizens, we decry the language of restriction, of monopoly, perhaps even of censorship that frequently asserts itself in Chapter 8.

On p. 190, for example, one finds a disturbing discussion based on the authors' anxieties that "information maintained by the vendors will not match that found in the bound [Congressional] Record." Quite apart from the fact that vendors have every incentive to disseminate the most authoritative version of the Record, it should hardly need saying that it is not the place of Congress to police the subsequent use of the information that it generates. As this subcommittee noted in its report Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview:

> Any information can always be used in some way that may not have been intended by its creator. This possibility does not justify government control over public domain data.
> (99th Congress, 2d Session, House Report 99-560, p. 35)

If private investment had not been used to create an index to congressional hearings and other working documents, and if private capital had not been invested to help disseminate these documents, my guess is that we would still not have any such services today. I would also venture to say that if it were not for the positive influence of information industry products upon such GPO operations as the Superintendent of Documents sales program and the production of the Monthly Catalog, the administration of these operations would not have shown as much improvement as it has over the past dozen years.

As for the claim that "better indexing" of congressional information is needed, I would like to hear personally from anyone in the government, from any government documents librarian, or from any member of the documents-using public who believes that existing indexes produced by the private sector are inadequate, and that the government can and should do a better job than the private sector is now doing.

Conclusion

None of my letters to the OTA project director were ever answered; nor does the final report reflect in any coherent way the perspectives that I and others from the private sector attempted to communicate in the panel sessions, or that I submitted after reading the draft final report.

This past April, together with two colleagues on the advisory panel, I visited OTA's Assistant Director with responsibility for the Science, Information, and Natural Resources Division. We expressed disappointment that the study to which we had devoted considerable time and thought had culminated in such a substandard piece of work. But the Assistant Director seemed too preoccupied with reflexively defending the report to recognize that, in its authors' haste to please Congress, the report has in fact failed Congress, as well as the public that paid for it.

I would like to venture a prediction. If the Joint Committee on Printing and the Government Printing Office attempt to make a massive transition to electronic dissemination along the lines of the fallacious reasoning we have seen emanating from JCP and OTA over the past two years, the results will be:

- Vastly increased costs;
- Untimely and unreliable service; and
- Curtailed public access to federal information.

As this subcommittee asserted in the 1986 report Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview, to which I have already referred:

> **Fair competition means that an agency should limit the services that it offers to the public and should leave the private sector to provide additional value-added services.**
> **(99th Congress, 2d Session, House Report 99-560, p. 59-60)**

What the OTA report should have done, but did not, is to find ways to take advantage of the private sector's genius for innovation and responsiveness to the domestic and, increasingly, the worldwide thirst for sophisticated access to federal information.

With respect to the Government Printing Office, I suggest instead that, for the good of all of us, it concentrate on production of basic data files, with an emphasis on paper and magnetic tape. If we reach a political consensus that depository libraries need better electronic reference and retrieval capabilities, I suggest that the best way to guarantee that outcome -- and, in the end, probably the only way --would be to fully fund the depository system so that each library could acquire electronic products from sources of its own choosing.

Moreover, I support the Information Industry Association's call for reauthorization of the Paperwork Reduction Act, and incorporation of the following principles:

1. In disseminating information, an agency should ensure equal access to the information, to guarantee that no party -- public or private -- has the ability to exercise monopolistic control, and ensure that copies of government databases are available on a timely basis to all.
2. Agency decisions to create, change, or eliminate information products and services should be made through a process which is fully exposed to public view and in which the public may

participate. At a minimum, an agency should provide public notice of its intent. This notice should include an explanation of the benefits and general costs that will result from the agency's action.

3. User fees for government information products should not exceed the marginal cost of providing copies of the information.
4. The government should provide access to public information in whatever media it is available.
5. Federal agencies must not assert copyright, or implement copyright-like provisions, over their information products absent clear statutory authorization.

I and the firm that I head are committed to continued efforts to improve access to federal information, and we hope to continue our participation in the development of federal information policy. Thank you for the invitation to share my views with you today.

Mr. WISE. Next is Mr. Terragno, president of Maxwell Online.

STATEMENT OF P. JAMES TERRAGNO, PRESIDENT, MAXWELL ONLINE, INC.

Mr. TERRAGNO. Thank you, Mr. Chairman.

I appreciate the opportunity to testify today. The series of hearings you are holding, are very important and hopefully they will result in what I consider to be an over-due comprehensive, fair and realistic information policy.

As you said, I am here as president of Maxwell Online. Maxwell Online is an online data base vendor and text retrieval software company obviously operating in the private sector.

Before I joined Maxwell Online 8 years ago, I served for 4 years as the Director of the Office of Search Systems in the Trademark and Patent Office, so I come to this hearing with a perspective from both the private and public side.

I don't want to give a commercial, but I think it would be important in the context of my comments to give an overview of what Maxwell Online is. Maxwell Online is a large online vendor providing online access to over 250 data bases. These data bases include scientific, technical and patent information through our orbit search service. They include medical and business information through our BRS search service.

Of particular interest to this hearing is a service we offer called BRS/Colleague, which provides online access to biomedical information with an easy-to-use system for health care professional end users, or if you would like, physicians operating in the research and practice environment. BRS/Colleague's customers make heavy use of the Medline data base, which we license from the National Library of Medicine. They also make use of other biomedical data bases which we offer on BRS/Colleague.

Among the data bases Maxwell Online offers are over 20 data bases produced by the Federal Government, including those provided by such agencies as the National Library of Medicine, the U.S. Patent and Trademark Office, NTIS, the Department of Agriculture, and the National Institute for Occupational Safety and Health. While these Government data bases represent less than 10 percent of the total number of data bases offered by Maxwell Online, they are important data bases because of the significance of the information they contain. I should also add that we obtain these data bases from these agencies in magnetic tape form.

With that as background, I would like to focus the rest of my comments today on two Federal information policy issues, the pricing of Government information, and the control over resale of the Government data bases.

From my position in the private sector, and with a view toward balancing our interest as a profitmaking organization against the public interest in maximizing dissemination of Federal Government information, I submit that the best method for pricing Government information is to base the price on marginal costs. I think that not only is marginal cost pricing the best policy but that it is supported by the copyright provisions and by the court cases which have interpreted the proper basis for user fees.

There is wide support for such marginal cost pricing, including that from library organizations, that from your subcommittee in a 1986 report, and that from Congress in legislation that has passed in the last 2 years, including decisions involving EDGAR and the Patent and Trademark Office.

I am sad to report to you that some Federal agencies impose use charges for data bases obtained on magnetic tape. Their prices are based on online usage of data bases, that is a charge that is levied to Maxwell Online and others who use their data bases for each hour of use plus citations which are printed from the data base. This use-based pricing, as we call it, not only is in violation of copyright provisions and user fee principles, as we understand them, but it results in hindering the broader dissemination of Federal information.

Certainly I think we can all agree that wider dissemination of Government information is a principle that should be in place, but user-based pricing works against this principle. The primary example of agencies using user-base pricing are the National Library of Medicine and the National Technical Information Service. Because we need their data bases to complement other data bases we offer, we are forced to pay these agencies' use charges. These costs to us, real costs to us, have to be reflected in our prices, thus increasing costs to users of the private-sector services.

A primary example, on the other hand, of an agency that does charge marginal costs for their information is the Patent and Trademark Office. The Patent and Trademark Office uses marginal cost-based pricing for tapes, magnetic tapes, that contain patent and trademark information, and they plan, on the basis of recent hearings, to use marginal cost-based pricing for access to their automated systems provided in their public search rooms.

Further, the Patent and Trademark Office does not plan to offer a competitive online patent or trademark information search service for the public at large, although we are somewhat concerned about the possibility of their providing such a service to patent deposit libraries. Over the past decade, the Patent and Trademark Office has had some pricing methods that were less than acceptable, but we are pleased to see that they now have what we consider to be an outstanding pricing system in place. They are to be congratulated. Their procedure is a model of regulatory balance and fairness.

As to control over resale, Maxwell Online is not generally in the business of reselling tape copies of data bases produced by the Federal Government. However, we do have a service called BRS/On-Site, which offers data bases along with the BRS text retrieval software for installation on our customers' computer sites. This service includes providing a number of data bases which are indexed and loaded as part of an onsite installation. These data bases can be searched on our customers' own computers at a fixed cost using our software. Buyers of this service are usually universities and large corporations.

The specific problem I want to address today concerns a de facto copyright situation. Many of our customers want the National Library of Medicine's data base as one of the data bases to be loaded onto their own computer. We can and do provide copies of Medline in the United States. However, the National Library of Medicine does not allow us to provide copies of this data base or copies of the subsets of the data base outside of the United States. They do, I should point out, allow us to provide online access to the Medline data base which is stored on our computer in the United States.

Our agent in Japan, for example, tells me that they have several prospects eager to buy the BRS software with the Medline data base, but, of course, we are restricted by the National Library of Medicine from offering copies of Medline in Japan. However small, these restrictions are affecting our balance of trade with Japan and with members of the EEC, for example.

As you know, Mr. Chairman, penetrating the Japanese market is difficult enough without having restrictions imposed upon us by one of our Government agencies.

Mr. Chairman, that summarizes my testimony concerning these two issues of pricing and resale restriction for Federal information. We believe that the reauthorization of the Paperwork Reduction Act provides an excellent opportunity to establish a congressional policy which will improve access by citizens to Government information. We believe a diversity of sources and a partnership, if you will, between the public and private sector will provide the more effective dissemination of Federal information which is the goal of your subcommittee and the full committee, as I understand it. The private sector can expand and enhance overall Government information dissemination effectively if policies that prohibit use-based pricing and prohibit restrictions on redissemination are included in the reauthorization legislation.

Thank you.

[The prepared statement of Mr. Terragno follows:]

MAXWELL
ONLINE

Divisions
ORBIT Search Service
BRS Information Technologies
Pergamon Search Center

TESTIMONY

OF

P. JAMES TERRAGNO

PRESIDENT

MAXWELL ONLINE, INC.

BEFORE THE

SUBCOMMITTEE ON GOVERNMENT INFORMATION
JUSTICE AND AGRICULTURE

OF THE

COMMITTEE ON GOVERNMENT OPERATIONS

UNITED STATES HOUSE OF REPRESENTATIVES

ON

FEDERAL INFORMATION DISSEMINATION POLICIES AND PRACTICES

JULY 11, 1989

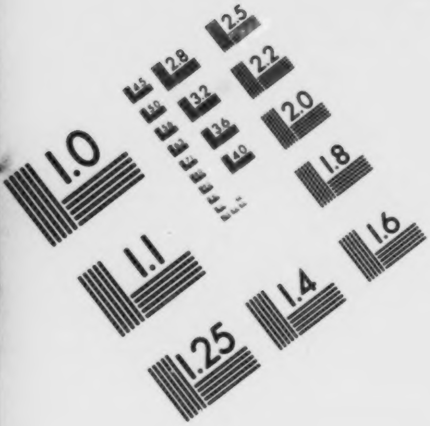
Thank you, Mr. Chairman and Members of the Subcommittee for inviting me to testify on federal government information dissemination policies and practices.

My name is P. James Terragno. I am here today as President of Maxwell Online, Inc., an online database vendor and text retrieval software company. We provide online access to over 250 databases. Prior to joining Maxwell Online in 1980, I served four years at the U.S. Patent and Trademark Office as the Director of the Office of Search Systems, so I am familiar with federal information policy issues from both the public and private perspectives. I am accompanied by our legal counsel, Joseph L. Ebersole.

Maxwell Online has four divisions: ORBIT Search Service -- offering online access to databases containing primarily science and technology information, including patent information; BRS Information Technologies -- offering online access to databases containing primarily biomedical and business information; BRS Software Products -- offering software for on-site text retrieval applications for mainframes, minis, and PCs, with over 1000 installations; and, Pergamon Search Center -- an information on demand service including search, retrieval, and document delivery for patents and trademarks. Although we are U.S. based and our primary market is the U.S., a substantial part of our usage comes from outside the U.S. -- primarily Japan, United Kingdom, West Germany, France, Canada, Netherlands, Italy, and Switzerland.

We have over 70,000 active passwords. Passwords entitle customers to use the databases available on the BRS and ORBIT Search Services. Of particular interest in the context of this testimony is a service we call BRS/Colleague which offers easy-to-use online access to biomedical information for health care professional "end-users", primarily physicians, working in both research and practice environments. BRS/Colleague customers make heavy use of the Medline database which we license from the National Library of Medicine.

We also offer access to over twenty other federal government databases. These include databases produced by such agencies as: the U.S. Patent and Trademark Office, the National Technical Information Service, the Department of Agriculture, and the National Institute for Occupational Safety and Health. (Databases for the latter two agencies are licensed from the National Technical Information Service.) While these government databases represent less than ten percent of the total number of databases we offer, they in fact are very important databases because of the significance of the information they contain.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AIIM

Association for Information and Image Management

1100 Wayne Avenue, Suite 1100
Silver Spring, Maryland 20910
301/587-8202

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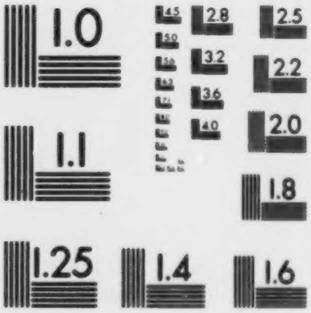
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In my comments today, I'd like to focus on two policy issues: (1) pricing of government information; and (2) control over resale of government databases.

A. PRICING OF GOVERNMENT INFORMATION

There is a strong consensus that user fees and user charges for government information should be based on the marginal costs of providing the requested information. This principle of marginal costs as the proper basis for pricing government information has been approved:

- by your Subcommittee[1],
- by the Association of Research Libraries, which recommended that "Copies of most government databases should be made available at simple reproduction cost."[2]
- by the National Commission on Libraries and Information Science Federal Government Task Force which recommended as "Principle 6. The federal government should set pricing

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[1] Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview, H.R. Rep. No.560, 99th Cong., 2d Sess. (1986) (hereinafter "House Policy Report") 36-43.

[2] Association of Research Libraries, Technology & U.S. Government Information Policies: Catalysts for New Partnerships (Report of the Task Force on Government Information in Electronic Format), October, 1987, at 28.

policies for distributing information products or services that reflect the true costs of access and/or reproduction...,"[3]

- by the American Civil Liberties Union,[4]

- by OMB in the Circular A-130 Section-by-Section Analysis, wherein they state that Circular A-25 "requires user charges only for costs of dissemination of government information, not for creation, collection, processing, and transmission of the information."[5]

- by economists,[6]

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[3] National Commission on Libraries and Information Science, Public Sector/Private Sector Interaction in Providing Information Services (Washington, D.C.: U.S. Government Printing Office, September, 1982) at 51.

[4] Paperwork Reduction Act Reauthorization, 1989: Hearings Before the Subcomm. on Government Information and Regulation of the Senate Comm. on Governmental Affairs, 100th Cong., 2d Sess., (June 12, 1989), (Oral testimony of Jerry J. Berman, Director, Information Technology Project, American Civil Liberties Union).

[5] Office of Management and Budget, Management of Federal Information Resources (Circular A-130), 50 Fed. Reg. 52729, 52733, See also Sec.8.a.(11)(c) at 52736, (Dec. 24, 1985) (hereinafter cited as "OMB Circular A-130").

[6] See Braunstein, Y., "The Functioning of Information Markets", in National Telecommunications and Information Administration, Issues in Information Policy 57, 58 (1981) (NTIA-SP-80-9).

- by the Congress in four recent Acts concerning the basis for fees for specific databases, *viz.*,
    - The SEC's EDGAR: marginal costs of reproduction[7]
    - The Patent and Trademark Office's APS & T-SEARCH: reasonable fees[8], defined by the agency rules as marginal costs[9]
    - The Department of Commerce's NATIONAL TRADE DATA BANK: reasonable fees consistent with the Freedom of Information Act[10]
    - The Environmental Protection Agency's TOXIC RELEASE INVENTORY: cost reimbursable basis[11]

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[7] SEC Authorization Act of 1987, P.L. 100-181, Sec. 101 (1987)

[8] P.L. 100-703, Sec. 104(c)

[9] Notice of Proposed Rulemaking, 54 Fed. Reg. 18908, May 3, 1989, wherein the Patent and Trademark Office, for both direct online use fees and fees for copies of databases on magnetic tape, noted that they "followed Congressional direction that fees be reasonable by reflecting the marginal cost for providing the new service..." *Id*.

[10] P.L. 100-418, 102 Stat. 1467, Sec. 5412 (Aug. 23, 1988). This means fees have to be based on the direct costs of searching and duplicating information. For magnetic tape copies of the database, only the costs of duplicating would be applicable.

[11] P.L. 99-499, Superfund Amendments and Reauthorization Act of 1986, Title III, codified as 42 U.S.C. Sec. 11023(j), which states "The Administrator shall make these data accessible by computer telecommunication and other means to any person on a cost reimbursable basis."

Although only one of the four statutes uses the term "marginal cost", in each case the intent is to charge only for the costs incurred by the government in providing the information, and in each case the intent is, in so doing, to expand dissemination and to make the data accessible to more people.

Citing this array of authorities and examples may make it sound as if marginal pricing is now universally used as the basis for determining charges for government information. Unfortunately marginal cost pricing is not yet applied in all instances. One example that should be added to the list above is that of the National Library of Medicine (NLM). Among government agencies, NLM can certainly be considered a success story. They are an outstanding agency, they continue to set a standard of excellence, they lead the world in collecting, cataloging, and indexing biomedical information, and they have been the leader in bringing about a number of technological developments in the information sciences. They were also one of the first agencies to adopt a policy of basing user charges on the marginal costs of dissemination for direct users of their Medlars online service. I did not list them in the examples above because, strangely enough, after endorsing and implementing the concept of marginal cost pricing for direct users, they applied a completely different policy in setting charges for licensees of magnetic tape copies of their databases. Thus, indirect users of NLM databases are subject to a different pricing policy. Currently, their tape licenses impose a use-based pricing scheme, under which an online database vendor licensee has to pay a "royalty" per hour of online use by each of their users, and a "royalty" for each offline citation printed by each of their users. NTIS includes a similar use-based pricing scheme in some of their licenses.

We believe this method of pricing is wrong. Wrong because it violates the copyright act, wrong because it violates principles and guidelines established by the Congress and the Courts for setting user fees, and wrong -- in the case of the National Library of Medicine -- because it discriminates against users of commercial online services and creates a situation where this class of indirect users is apparently subsidizing direct users of the NLM online service.

Mr. Chairman, each of these reasons is, we believe, cause on its own to conclude that use-based pricing for government information is wrong. Let me elaborate on why it is wrong for each of these reasons.

1. THE POLICY OF CHARGING A PER-HOUR USAGE FEE FOR TAPE LICENSEES AMOUNTS TO A ROYALTY AND VIOLATES GOVERNMENT POLICY ON COPYRIGHT. BY THIS IMPLEMENTATION OF COPYRIGHT-LIKE PROVISIONS, AN AGENCY IS IMPLICITLY IN VIOLATION OF SECTION 105 OF THE COPYRIGHT ACT.

The Association of Research Libraries Task Force on Government Information in Electronic Format, set forth the following as one of its principles:

> "Copyright is a private privilege and should not be available for any work of the U.S. Government that is produced with public funds. The Copyright Act prohibition of copyright of U.S. Government works is sound...Policies and practices that allow a Federal agency or a private organization to exert exclusive rights or other kinds of proprietary controls over government information in any format should be resisted."[12]

The prohibition to which the report refers is found in Section 105 of the Copyright Act.[13] David Ladd, then Register of Copyrights, characterized section 105 as --

> "a conclusion by Congress that the public interest is served by keeping governmentally created works as free as possible of potential restrictions on dissemination."[14]

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[12]. Association of Research Libraries Report, *supra* note 2, at 27.

[13]. 17 U.S.C. Sec. 105 reads as follows: "Copyright protection under this title (17 USC SS 101 *et seq.*) is not available for any work of the United States Government,..."

[14]. Letter from David Ladd, Register of Copyrights, to Sen. Charles Mathias (Oct. 11, 1983), reprinted in *1984 House FOIA Legislative Hearings* at 1138, as cited in *House Policy Report, supra* note 1, at 24.

This prohibition permits any person to reproduce a government document or government data. However, we are not here asserting a right to obtain government data base tapes free. The User Fee Statute and the NLM and NTIS Enabling Acts authorize charging for the tapes. But charges based on amount of use smack directly of the type of ownership and control permitted only for copyright holders. Indeed, copyright is what allows authors and creators to sell their works at a price that reflects the value of the information rather than just the cost of reproduction.

The use of this copyright-like royalty for tape licensees amounts to a *de facto* copyright, and not only is inconsistent with the prohibition against copyrighting of government works, but results in charges that are in excess of the marginal costs of providing copies of tapes to licensees. In fact, use-based charges bear no relation to the cost of duplicating, handling, and delivering magnetic tapes. The cost to the government is the same whether a given licensee's users access a government produced data base for ten hours, for one thousand hours, or for one hundred thousand hours per year.

2. USE-BASED PRICING FOR DATA BASE TAPE LEASING IS WRONG BECAUSE IT VIOLATES THE LEGAL PRINCIPLES ESTABLISHED BY THE CONGRESS AS INTERPRETED BY THE FEDERAL COURTS.

The case for marginal cost pricing is, we believe, further strengthened by the principles and guidelines propounded by the Supreme Court of the United States and the lower federal courts in cases interpreting the Independent Office Appropriations Act of 1952. That Act, often referred to as the User Fee Act, was the result of a movement in Congress to encourage Government agencies to establish fees to recover some of the costs of providing services to special beneficiaries. The movement began in 1950 with a study of the Senate Committee on Expenditures in the Executive Branch which culminated in a report to Congress on "Fees for Special Services."[15] At the time of the report the type of services for which fees were most obviously appropriate were services such as: radio station construction permits, operating licenses, certificates of public convenience and necessity, etc. The themes of recovering the costs directly associated with providing a special benefit to an identifiable beneficiary, were reiterated during the hearings in 1951 which led to enactment of the Act.[16] The Act authorizes the head of an agency to prescribe regulations establishing the charge for a "service or thing of value" provided by the agency, and it makes such regulations "subject to policies prescribed by the President...".[17] The Legislative History indicates that: "The Committee is concerned that the Government is not receiving full return from many of the services which it renders to special beneficiaries." (emphasis added)

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[15]. Senate Rep. No. 2120, 81st Cong., 2d Sess. (1950).

[16]. The Independent Offices Appropriation Act, 1952, Tit. 5, 65 Stat.290, 31 U.S.C. Sec. 483a (Amended and recodified in 1982 as 31 U.S.C. Sec. 9701, with the thrust of the Act remaining unchanged).

[17]. 31 U.S.C. Sec. 9701(a)

The User Fee Act includes a section stating that it "does not affect a law of the United States ...(2) prescribing bases for determining charges, but a charge may be redetermined under this section consistent with the prescribed bases."[18] The legislative history indicates that the Act is to provide authority for government agencies to make charges for (such) services "except where the charge is specifically fixed by law or the law specifically provides that no charge shall be made."[19]

Thus, if a statute "prescribes" a basis for charges, or if it specifically fixes a dollar amount, that statute would, in effect, supersede the User Fee Act. The Act is admittedly somewhat fuzzy and this fuzziness has shown up in interpretations by Generals Counsel over the years. However, when one reviews the court opinions interpreting the Act, some of the fuzziness goes away. The opinions, we believe, establish guidelines which are generally applicable to user fees. And, I should note Mr. Chairman, that I believe they are consistent with the concept of marginal cost pricing for government information. Also, as a recent (1988) opinion observed: "The statute by its express terms sweeps with considerable breadth....The legislative history does not purport to limit the statute's scope....The enumerated illustrations of various benefits...cannot...be equated with implied limitations."[20]

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[18]. Id., Sec. 9701(c)

[19]. H.R. Rep. No. 384, 82d Cong, 1st Sess., 3.

The language of the User Fee Act instructs agencies to be fair in imposing any fee schedule and to consider such factors as:

(A) the costs to the government;

(B) the value of the service or thing to the recipient;

(C) public policy or interest served; and

(D) other relevant facts.[21]

The meaning of these factors was first addressed by the Supreme Court of the United States in 1974 in National Cable Television Assn., Inc. v. United States.[22] In that case the Court rejected a fee for each CATV system at the rate of 30 cents per subscriber per year.[23] The Court concluded that such fees went beyond the recovery of costs for benefits conferred upon identifiable beneficiaries, and that charges based on revenues amounted to levying of taxes, a power vested exclusively in Congress.[24] The Court noted that although, for levying taxes, the Government could base the amount to be charged on income or ability to pay, it could not do so for fees. A fee is different, it stated, because it is incident to a voluntary act, *e.g.*, a request. "A 'fee' connotes a 'benefit'" and the proper standard for determining the fee is the value to the recipient.[25] The remaining question was then the precise meaning of "value to the recipient." This was answered in a Court of Appeals opinion reviewing the revised fee regulations after remand from the Supreme Court to the FCC. In that case, *National Cable Television Assn., Inc. v. F.C.C.*,[26] the Court stated that, in setting a fee, the agency must look *not* at the value which the beneficiary may *derive*, but at the value of the services which the agency *confers*. This means that a fee, in order not to be a tax, cannot be justified by the revenues received or the profits made, but must be reasonably related to those attributable direct and indirect costs which the agency actually incurs in providing the service.[27] This time around, the FCC had set the fee at 13 cents per subscriber, but, the Court pointed out, "There is no evidence in the record before us that supports the conclusion that it costs the agency twice as much to authorize and regulate a cable system with 2000 subscribers as it does...one with 1000 subscribers."[28] In a companion case, *Electronic Industries Ass'n., Etc. v. F.C.C.*,[29] the Court emphasized again that the "value conferred" measure of a valid fee means that the fee cannot exceed the cost of the service rendered, thus prohibiting fees...which increase with the revenues or profits of the payor without reflecting a reasonable relationship to the actual cost of rendering the service.[30]

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[20]. Ayuda, Inc. v. Attorney General, 848 F.2d 1297, 1300 (D.C.Cir. 1988)

[21]. 31 U.S.C. Sec. 9701(b)(2)(A)-(D)

[22]. 415 U.S. 336

[23]. It is of passing interest to note that this fee, which the Supreme Court rejected, represented about one-half of 1% of total subscriber charges.

[24]. 415 U.S. 336, 340-44 (1974)

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[25] *Id.*

[26] 554 F.2d 1094 (D.C. Cir. 1976)

[27] 554 F.2d 1094, 1107

[28] 554 F.2d 1094, 1108

[29] 554 F.2d 1109 (D.C.Cir. 1976)

Thus, although the Congress was not specifically contemplating a "service or thing of value" such as information when it passed the User Fee Act, and although the marginal cost concept for government information pricing had not yet emerged, the principles and guidelines developed by the Courts for determining the proper bases for user fees, are consistent with the concept of marginal cost pricing. In fact, the cases read as if referring to use-based pricing. And in these and subsequent cases, the Courts have made it clear again and again that the basis for charging is the cost to the agency of fulfilling the request, of providing the specific service requested, and that an agency cannot consider hours of use, or revenues, or any similar measure as the basis for a charge, unless such a measure is correlated directly with additional costs to the agency as it increases. The cases thus suggest that use-based pricing amounts to levying a tax.

It is useful to look at the NTIS and NLM authorizing legislation. NTIS fees are authorized by 15 U.S.C. Sec. 1153, which provides that the Secretary is authorized to establish "reasonable fees or charges for services performed or for documents or other publications furnished..."[31] The stated policy of the NTIS Act is that "...to the fullest extent feasible...each of the services and function provided herein shall be self-sustaining."[32] This language is closely parallel to that of the User Fee Act, viz., "It is the sense of Congress that each service of thing of value provided by an agency...to a person...is to be self-sustaining to the extent possible."[33]

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[30]. 554 F.2d 1109, 1115

The NLM statute provides that NLM "may provide for making available such publications, materials, facilities, or services -- (A) without charge as a public service, (B) upon a loan, exchange, or charge basis, or (C) in appropriate circumstances, under contract arrangements made with a public or nonprofit entity."[34] NLM thus has flexibility in that it can use fees, or methods other than charging fees, as consideration for materials and services it provides. The legislative history pertinent to this provision states:

> "The Committee expects, insofar as feasible and taking into account accepted library practice, that such charges will

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[31] 15 U.S.C. Sec. 1153

[32] Id.

[33] 31 U.S.C. 9701(a)

[34] 42 U.S.C. Sec. 286(d)(2). This section was enacted on August 3, 1956 by Public Law 941, 70 Stat. 960.

> be levied when the services to be rendered or the materials or facilities to be made available are other than routine and obviously and clearly convey a special, identifiable, added benefit to such non-public agency, organization, institution, or individual and that such charges will be reasonable in light of the cost and the limited usefulness to the public of the particular materials, facilities, or services involved."[35] (emphasis added)

Consistent with the statute and its legislative history, the Secretary of HHS has issued regulations at 42 CFR Sec. 4.5(d), providing that the NLM Director may charge fees reasonably designed to recover all or a portion of the cost to the Library, including personnel costs, of providing any services, including specifically the cost of providing access to the Medline tapes.

The language and themes expressed in the NLM statute and legislative history are the themes and language developed by the Congress in the User Fee Act legislation. These themes included charging only if there was a special benefit; and establishing such charges reasonably and in light of the cost.

NLM notes that their statute does not explicitly prescribe a basis for determining charges as the User Fee Act requires, but asserts that the legislative history of the NLM Act establishes a rule of reasonableness, and that the Director may use the rule of reasonableness[36], or may determine charges based on the factors prescribed in the User Fee Act.[37]

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[35]. Senate Report No. 2071, 84th Cong., 2d Sess., p. 3 (1956)

I suggest, Mr. Chairman, that the requirements for "reasonableness," or for "reasonable fees," for government information dissemination prices, have been clearly delineated by the courts. Thus, the criteria for determining what constitutes reasonable fees are, we believe, clear and settled.[38]

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[36] The most recent interpretation by a government agency of what constitutes "reasonable fees" was made in May, 1989. Under Section 104(c) of P.L. 100-703, *Patent and Trademark Office Authorizations*, the agency was directed to establish "reasonable fees." Pursuant to this Act, and consistent with Department of Commerce policy, the Patent and Trademark Office in a Notice of Proposed Rulemaking, noted that they "followed Congressional direction that fees be reasonable by reflecting the marginal cost for providing the new service..." 54 Fed.Reg.18908, May 3, 1989. In a companion Final Notice on Electronic Data Dissemination Policies and Guidelines, Section G. provides that: "Fees charged for bulk data...will be based on the marginal cost of providing such distribution services." 54 Fed. Reg. 18923, May 3, 1989. Provision of database tapes by NLM is an example of "bulk data."

[37] *Electronic Collection and Dissemination of Information by Federal Agencies: Hearings Before a Subcommittee of the Committee on Government Operations, House of Representatives* 99th Cong. 1st Sess. (1985) (Hereinafter "*Hearings, 1985*") 399.

[38] This conclusion is further strengthened by the fact that neither of the noted authorizing statutes have been the subject of litigation to determine what reasonableness or reasonable fees means.

This conclusion becomes even stronger when one considers the typical types of government services which have been the subject of law suits challenging user fees. In most of the cases, the fee was for processing an application which would result in granting a license or privilege, without which the beneficiary could not be in business. Further, in many cases, the license or permit or certificate, grants the special beneficiary immunity from competition or from antitrust liability, certainly extremely valuable benefits! Yet, the restrictions the courts placed on user fees were primarily within this context. Therefore, when the type of benefit is that of being able to further disseminate government-developed information, and where the government agency is itself in competition with the tape licensee (as is the case with NLM), the conclusion is a fortiori that the current use-based license fee is improper.

3. THE POLICY OF CHARGING A PER-HOUR USAGE FEE FOR TAPE VENDORS HINDERS THE DISSEMINATION OF BIOMEDICAL RESEARCH INFORMATION.

The statutory mission of NLM has as one of its implicit goals reaching the maximum number of health professionals. Because of the nature of information as an economic good and the nature of the medical information market in the United States, the effect of the current license fee policy is to hinder the broader dissemination of biomedical information.

Information as an economic good differs from ordinary goods. One Economist, Yale M. Braunstein, has delineated five ways in which information tends to differ from ordinary goods and services.[39] In terms of economic efficiency, he concludes that any price other than a marginal cost price hinders efficiency.

A second aspect of the impact of the current use-based pricing on dissemination is shown in the characteristics of the market for biomedical online information compared to other markets, such as financial and legal. Financial and investment analysts and brokerage firms have to have the fastest available information and treat information service costs as a necessary cost of doing business. Information costs have been built into the financial services pricing structure for years. In the legal profession, research using online information services is part of the services law firms offer clients. Costs for online searches are typically charged to clients, often with markups (on the grounds that online searching both lowers client research costs and increases quality). Thus, for lawyers, legal data base services are a way for increasing quality and efficiency, and for increasing revenues.

The medical market is quite different. First, the CPT codes which are the basis for physician services payments by insurance companies and Medicare and Medicaid, do not include literature searches (online or manual) or literature reviews as a basis for charges, nor are they a basis for defining a higher level of service and thereby charging a higher amount. Second, physicians tend to approach their practice differently from, for example, lawyers or financial analysts, who make frequent use of data bases. Most physicians do not normally conduct a review of the relevant biomedical literature as part and parcel of usual and customary services. And if a physician does conduct frequent online searches, there is, as noted, no mechanism for obtaining reimbursement as in the financial or legal professions. Thus, the medical information market has built-in disincentives for frequent online searches.

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[39]. Braunstein, Y. supra note 6, at 24.

One result of these market differences is that profit margins are much higher for financial and legal information services than for medical information services. It is no accident, for example, that, in 1987, Mead Data Central, providers of the LEXIS and NEXIS information services, stopped marketing the MEDIS Service to the medical market and discontinued updating of many biomedical journals (some elements of the service were retained online for use by litigators and hospital administrators), or that the BRS/Colleague service has been sold twice in the past several years. In the information industry, it is generally understood that data base services for the financial and legal professions have relatively healthy profit margins. Medical online search services have a reputation of having nonexistent or relatively low profit margins. Thus, when the NLM Director states that "the $3 or $4 charged by NLM are relatively small portions (of the hourly charges by commercial online services), perhaps as little as 10 percent."[40], it shows a misapprehension of the impact of the NLM royalty on commercial service licensees. The $3 or $4 per hour represents not "as little as 10 percent," but actually closer to 100 percent of the potential profit margin. The referent is misplaced. The more accurate referent is not total hourly charges, but the potential profit margin. From this more realistic perspective, it is clear that the royalty is a barrier to new entrants into the field and has a major impact on operations of existing services and their ability to expand outreach or marketing efforts so as to reach more health professionals. Thus, the net effect is to limit the number of health professionals reached and thus to hinder dissemination.

The impact of the NLM pricing policy and the differences in markets shows up in the size of the marketing forces, which represent a major part of the capability for reaching additional health professionals. Again, there is a misapprehension on the part of NLM as to the size of the "field forces" for commercial biomedical online services. For example, at the Fiscal Year 1989 Appropriations Subcommittee Hearings, the Director noted, when discussing the size of the field forces, that "Mead Data Central, for example has 300 people who call upon customers and show them how to operate their systems. We have none."[41] This statement was made in good faith, and we are not disputing its accuracy. But, according to our understanding, the 300 people referred to were almost exclusively supporting the LEXIS and NEXIS services, not the biomedical information service called MEDIS. Perhaps a more relevant comparison is with the marketing force for BRS Colleague, which, over the past several years has had a maximum field force of fifteen people, and for most of that period substantially fewer.

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[40] *Hearings, 1985, supra* note 37, at 281. Actually the charges per hour are close to $5 -- not $4 -- because the effect of the additional, seemingly minor, charge of one-cent-per-offline-citation-printed is to increase the total royalty by as much as $1 per hour.

Mr. Chairman, we recently initiated a dialogue with NLM on their pricing policy and other subjects. The dialogue is harmonious, but I should tell you that we have not yet persuaded the Director and the Board of Regents that our view on use-based pricing is correct. However, because both they, as a public agency, and we, as a private for-profit organization, have a mutual interest in seeing that NLM-developed data reaches a broader audience of health professionals, we have told them that if the pricing policy is changed as proposed, Maxwell Online, Inc., will increase its marketing and field forces, with the result that additional health professionals will be provided access to biomedical information. We expect that with the changed economics, other database vendors would make the same decision. The

ultimate beneficiaries of this change will be the unknown number of patients whose quality of care will be increased because more health professionals are provided access to biomedical information.

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[41]. *Departments of Labor, Health and Human Services, Education, and Related Agencies Appropriations for 1989: Hearings Before a Subcommittee of the Committee on Appropriations, House of Representatives, 100th Cong., 2d Sess.* 941 (1988) (Statement of the Director, National Library of Medicine).

4. USE-BASED PRICING DISCRIMINATES AGAINST USERS OF NLM DATABASES VIA COMMERCIAL DATA BASE SERVICES BY FORCING THEM TO BEAR THE BURDEN OF COSTS IN EXCESS OF MARGINAL COSTS. FURTHER, THE FEES COLLECTED FROM TAPE LICENSEES APPEAR TO BE SUBSIDIZING MEDLARS ONLINE USERS.

Although it was the intention of the NLM Board of Regents to provide "equal treatment,"[42] and although the Board of Regents in 1984 rejected the concept of differential pricing by type of user[43], the effect of the use-based fee for tape licensees is exactly the opposite. Users of Medline data indirectly via BRS/Colleague and other commercial biomedical online information services have to bear, as part of the cost of their service, a fee which has no relationship to NLM marginal cost and in fact awesomely exceeds marginal cost, while direct MEDLARS users have to pay only marginal costs. The actual effect, then, is discriminatory against the users of NLM data via commercial data base services, and amounts to creating a second class of user, a result which the Board of Regents has already rejected as a matter of policy.

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[42]. National Library of Medicine, Policies of the Board of Regents, January 27, 1983, Sec. III. "User Charges for Online Services" (Reprinted in Hearings, 1985 at 405). The full sentence reads "Equal treatment, shared costs, and fair prices are the three legs on which NLM policy rests."

[43]. Hearings, 1985 at 416.

Further, as the House Policy Report stated: "If (the NLM Director's) contention that overall revenues from Medlars users are equal to the costs of supporting all users is accepted, then it follows that the fees collected from tape licensees are being used to subsidize online users of Medlars."[44] This conclusion is strengthened by a flawed GAO Report in 1982[45], which involved an in depth evaluation of Medlars dissemination costs, and a cursory evaluation of the extent to which NLM's policy comported with regulations and statutes. One major flaw in the GAO report was a complete failure to review the Supreme Court and Court of Appeals decisions cited above. This, in spite of the fact that the report cited and placed considerable reliance on OMB Circular A-25, which was issued to help implement the User Fee Act and was thus subject to court decisions interpreting that Act. Further, the GAO report failed to distinguish between the two classes of users. It lumped together the costs of accessing Medlars with the costs for production, replication, and distribution of tapes. At that time, Fiscal Year 1981, the costs were as follows[46]:

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[44]. House Policy Report at 29.

[45]. United States General Accounting Office, National Library of Medicine's Medical Literature Analysis and Retrieval System, (HRD-82-66), April 15, 1982.

[46]. Id., pp. 4-6 of Enclosure I.

Total costs for accessing Medline via Medlars:	$3,241,000
Total costs for producing, replicating, and distributing tapes (for all tape users):	$25,000

The costs for accessing should have been allocated across the total Medlars online user hours, and the costs for tapes should have been allocated among the total number of tape licensees. However, the $25,000 in tape costs was aggregated with the $3,241,000 for online access costs (computer time, telecommunications cost, equipment costs, personnel costs, etc.), and the total revenues from tape license royalties and online user charges were aggregated. Then the two lump figures were compared. It thus appears that, as this Subcommittee's report in 1986 stated: "fees collected from tape licensees are being used to subsidize online users of Medlars." As a result of these inconsistent pricing methods, NLM ends up competing unfairly with commercial data base services.

The flawed GAO analysis perpetuated itself by providing the basis for approbation of the NLM pricing policies by the House Committee on Energy and Commerce in 1985.[47] Thus, we understand why NLM has continued the policy even though it is inconsistent with their overall excellent policy structure. Mr. Chairman, when I was in government, the blessing of a Congressional Committee seemed like the ultimate confirmation that what I was doing was correct. It certainly did not provide an impetus for change -- in fact, the opposite.

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[47]. House Report 99-158 at 43 (1985)

One year after the GAO conclusion was noted by the House Committee, the GAO reversed their position and interpreted the basis for user fees differently. In 1986, a GAO Report concluded that current laws -- including the User Fee Act -- bar a government agency furnishing information to the public from charging user fees that exceed the cost of providing a copy of the information.[48] Although the erroneous interpretation has now been corrected, this was apparently not communicated to NLM by GAO.

This example, we believe, illustrates why a greater degree of coordination of government information dissemination policy is needed. There is currently no administrative mechanism to effect change, and although I have argued that the guidelines established by the courts clearly set marginal costs as the proper basis for pricing, a policy statement to this effect by the Congress would reach a broader audience of Generals Counsel, since the court decisions seem to have been generally disregarded for information dissemination policy purposes.

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[48]. United States General Accounting Office, ADP Acquisition: SEC Needs To Resolve Key Issues Before Proceeding With Its EDGAR System, pp. 25-27 (GAO/IMTEC-87-2, Oct. 1986)

5. A CHANGE TO A MARGINAL COST BASED TAPE PRICING POLICY WOULD NOT ADVERSELY AFFECT NLM OPERATIONS.

Each year in recent years the NLM has returned in excess of $4 million to the general fund of the U.S. Treasury.[49] We believe the characterization and explanation which the Director has made in response to questions at hearings about the nature of the surplus is accurate, and the rationale reasonable and consistent with stated policy.[50] We note the existence of this amount, because we recognize the recommended change in policy could have the effect of reducing overall NLM user fee revenues to some extent. (This will not necessarily be the result, since Medlars use is growing at a rate which may more than make up any reduction in license revenues.) However, the substantial amounts returned annually to the Treasury in recent years, provide assurance that the change should not adversely affect NLM operations in any manner.

6. SUMMARY OF IMPACT OF USE-BASED PRICING

Mr. Chairman, you may wonder why I have placed greater emphasis on use-based pricing by NLM than I have on the same policy on the part of NTIS.

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[49]. For Fiscal Year 1987 the amount returned to the U.S. Treasury was $4.6 million. Appropriations Hearings, 1989, supra note 41, at 946.

[50]. Id.

The primary reason is that, although we stand ready and willing to rise to the competitive challenge of a government online search service whose rates are based on the marginal costs of access, we do not believe it fair to suffer what we consider to be a "double whammy" -- use-based tape licensing fees plus competitive government online service.

NTIS presents a somewhat different situation. We do plan to initiate a dialogue with them about use-based pricing, but have given it second priority because with NTIS we suffer only a "single whammy," in that it does not operate its own online service.

For both NLM and NTIS, the government databases provided are complementary to other databases to which we offer access. They sometimes cover areas not covered by privately produced databases. For example, as part of our BRS/Colleague service we have an online library comprising a number of biomedical and life science databases. None of these completely substitute for each other, nor do they tend to overlap more than 35% to 40%. Instead, they complement each other. Providing comprehensive biomedical coverage requires a combination of public and privately produced databases, and a service of our type cannot be complete without Medline. Thus, it is a very important part of our overall BRS/Colleague service.

Mr. Chairman, you may also wonder why I have had little to say so far about the pricing policies of the Patent and Trademark Office (PTO). It is because the PTO uses marginal cost based pricing for patent database tape licensing, and they plan to use marginal cost based pricing for access to their automated patent system (APS) in their public search room. Further, they do not plan to offer a competitive online patent or trademark search service for the public at large, although we are very concerned about the possibility of their providing such a service to Patent Depository Libraries. Over the past decade PTO has had some pricing methods for trademark tapes that were less than acceptable, but we are pleased to see that they now have what we consider to be an outstanding pricing system in place. They are to be congratulated. Further, I should note that they have been very explicit in reporting precisely how they compute marginal costs and what specific cost elements are included in this calculation. Their rule is a model of regulatory balance and fairness.

Finally, Mr. Chairman, I should state that we do support requirements in government database licenses which reasonably assure data quality control and continuing database integrity. Further, we think it reasonable that government licenses include a requirement that the licensee shall report the number of online hours the database was accessed each year. This provides the agency with feedback which helps it to determine the total outreach and probable impact of its information dissemination.

B. CONTROL OVER RESALE OF GOVERNMENT DATABASES

We are not generally in the business of reselling tape copies of government databases. However, we have a service called BRS/Onsite, which offers BRS software for retrieval applications on our customers' sites, and which includes providing a number of databases which are indexed and "loaded" as part of the installation. The databases can then be searched on the customer's computer using the BRS software. Buyers of this service are usually either universities or large corporations.

The specific problem I want to address today concerns another *de facto* copyright situation. Many customers want the NLM Medline database as one of the databases to be loaded onto their computer systems. This is frequently done in the United States. However, the NLM does not allow us to provide a copy of the database, or subsets thereof, to organizations in other countries. Our agent in Japan, for example, tells me he has several prospects eager to buy the BRS software with the Medline database. However, we cannot sell to these potential customers because we are restricted by NLM from offering copies of tapes containing Medline in Japan. These restrictions thus are negatively affecting our balance of trade with Japan and with members of the EEC.

Let me put this in perspective. In the area of biotechnology the NLM is extremely important to the competitive position of the United States versus Japan. It is estimated worldwide sales of biotechnology-based products will be $45 billion to $60 billion by the year 2000. The Department of Commerce estimates such products will account for eleven percent of Japan's gross national product by that time. NLM is extremely important to our competitive position because of its new National Center for Biotechnology Information, which will play a major role in our overall national strategy for biotechnology. I mention this, because, admittedly, the concern I am expressing is not nearly as important to the United States' competitive position as is assuring progress in biotechnology. Thus, from the NLM perspective, the restriction may seem very minor. Even so, it is important to us and to other commercial information services, and it does directly affect this year's balance of trade. Further, it is the type of restriction which may prevent us from making an initial penetration of the Japanese market for onsite installation of software, and as you know, Mr. Chairman, penetrating that market is difficult enough without having restrictions imposed on us by one of our own government agencies.

I should emphasize, in the interests of clarity, that this restriction applies to database copies only, and does not preclude a user in another country from searching Medline via our online service located in the United States, using international dial-up access.

C. Conclusion

Mr. Chairman, that concludes my discussion of these two issues of pricing and resale restrictions for government information. We believe that the reauthorization of the Paperwork Reduction Act provides an excellent opportunity to establish a Congressional Policy which will improve access by citizens to government information. We believe a diversity of sources and a partnership, if you will, between the public and private sectors will provide the more effective dissemination of government information which is the goal of your Subcommittee and of the full Committee. The private sector can expand and enhance overall government information dissemination effectively if policies that prohibit use-based pricing and restrictions on redissemination are included in the reauthorization legislation.

Mr. WISE. Mr. Ebersole, do you have anything you wish to add?

Mr. EBERSOLE. No.

Mr. WISE. Mr. Perritt.

STATEMENT OF HENRY H. PERRITT, JR, PROFESSOR OF LAW, VILLANOVA UNIVERSITY SCHOOL OF LAW

Mr. PERRITT. Thank you, Mr. Chairman. I appreciate the opportunity to be here today, and in light of your statement in the introduction that our prepared statements will be made a part of the record, I will summarize and highlight briefly my testimony.

I am a professor of law at Villanova Law School. I am the author of a report prepared for the Administrative Conference of the United States on Electronic Acquisition and Release of Agency Information, and though my testimony draws on the research behind that report, I speak not for the Administrative Conference but rather as an individual, a legal academic and author of a book on how lawyers can use this technology to serve their clients more cheaply and with higher quality legal services. Finally I might say I speak as a regular user of some of the information technology that we have been talking about this morning.

I would like to begin by commending this subcommittee, which has played a key and central role in making sure that information policy keeps pace with information technology, and has been a forum within which initially sharply conflicting views have come into remarkable agreement, as we heard from the previous panel.

I think that five basic propositions should guide the evolution of information policy from this point forward. The first two propositions are not as controversial as they would have seemed a couple of years ago. The first proposition is that it is appropriate, indeed it is inevitable, that the Government will add value to electronic information just as it adds value to paper information.

My prepared testimony sketches a comparison between five types of value that might be added in preparing paper versions of an agency regulation with the corresponding types of value that might be added in electronic equivalent of that information.

The second point is that there is no reason to redraw the boundary between what the Government does and what the private sector does when we move from paper information to electronic information. Few people would argue, for example, that it is inappropriate for the Government to prepare indexes or tables of contents for paper information, and similarly it is not, in my view, inappropriate for the Government to add value of that type to electronic information.

At the other end of the scale, however, almost no one would suggest, if we are thinking about paper information, that the Government ought to start from scratch and develop its own equivalent of the Postal Service or Federal Express in order to distribute paper information.

Similarly, the Government ought not to start from scratch and develop expensive and elaborate distribution mechanisms for electronic information involving thousands of telephone lines and modems and other necessary infrastructure for dial-up access.

Implicitly with paper information, costs and benefits are compared in deciding where the line should be drawn between government adding of value and private sector functions. Costs and benefits should continue to be the guide for drawing that boundary with respect to electronic information.

The issue in drawing the boundary line between public and private sector activity is not what should be done to protect profit opportunities. The point is: it serves the public interest for there to be a diversity of information products and information providers. It is important that there continue to be an active and vigorous private sector role in providing public information to the public.

But those are the easy propositions. The next three propositions are the hard ones. They have to do with implementing the idea of drawing the boundary line according to that basic cost/benefit concept.

The third proposition recognizes—as does this subcommittee's report that virtually every witness this morning has referred to—that there are certain characteristics of electronic information that make it even easier to duplicate than paper information. That ease and low cost of duplication make it hard for people to recover investments in infrastructure that makes electronic information widely useful to the public.

The difficulty in protecting investment and recovering investment tempts agencies and private-sector interest groups to come up with arrangements for protecting markets and supporting prices for electronic information products. The history of electronic information policy is replete with examples of that temptation.

The early concepts for the SEC's EDGAR program envisioned protecting the market for a preferred provider of the EDGAR information. The Patent Office's early forays in automating the trademark data base sought to protect markets for a private sector preferred provider. The Customs Service System Mr. Plesser talked about this morning similarly sought to protect the market for—and therefore the value of—information to be provided to certain port authorities to induce them to perform useful services for the Customs Service. And yet the Freedom of Information Act policies, about which there is remarkable agreement, make it difficult or impossible to protect markets and prices for private sector providers no matter how desirable the activities that the private sector providers undertake.

And that is a natural bridge to the fourth proposition, which is that the Freedom of Information Act concepts basically are appropriately applied to electronic information as well as paper information. There is not much disagreement any more that electronic information is a record covered by the Freedom of Information Act. There is growing agreement that it is not per se the creation of a new record and, therefore, outside the obligations of the Freedom of Information Act, to retrieve electronic information from a data base, nor is it per se outside the Freedom of Information Act to do programming to retrieve information. That is a good thing, because the state-of-the-art technology involving relational data bases requires the creation of a new record in some sense every time information is retrieved. And similarly the data base technology also requires at least some degree of programming every time a record is retrieved.

I agree with the other people who have spoken to this point this morning, that it is not outside the Freedom of Information Act obligations to create new records in some instances or to engage in programming.

But there in lies the rub, because there also is reasonable agreement that the Freedom of Information Act ought not obligate the Federal Government to invest the capital in providing commercial data bases for commercial vendors. Yet no one that I have heard speak to the subject has been able to define very clearly the line between what ought to be an obligation under the Freedom of Information Act with respect to programming and new record creation and what ought not to be required because it is tantamount to creating a new commercial data base.

With respect to the development of legislation in connection with the Freedom of Information Act, I would hope that the development of legislation will be deliberate—to consider carefully ideas from various quarters on how one appropriately can distinguish the kinds of record creation and programming that must be required under the Freedom of Information Act, for electronic information and the kind of activities that should not be required because they would force the Government into commercial activities.

The fifth and final point is that the best way to preserve the diverse marketplace the public deserves and needs is to preserve some degree of pricing flexibility in conjunction with emerging interpretations of the Freedom of Information Act.

The clearest example of creative use of pricing in a public/private sector partnership is the Department of Agriculture's EDI program which relies on a private sector contractor. EDI does not—so far as I know—rely on any artificial FOIA interpretation to refuse access to the underlying data. It does rely on a pricing structure that furthers the agency policy determinations that private sector vendors are in the best position to design value-added user friendly front ends for access to this data.

Although one can press the distinction between wholesaling and retailing of electronic information too far, they are useful ideas. A particular example of wholesaling of Government electronic information is the possibility that the Federal courts would make their opinions available in electronic form so vendors who would then add further value to these opinions and make them available to the public and to the legal profession. That is an example of wholesaling the information. It is desirable and was endorsed this morning, as I understand the testimony, as a way of improving public access to court opinions, which is a very desirable thing, and yet something which is expensive in terms of the resources that are required.

But that's not the same thing as saying that the Federal courts should undertake to develop from scratch some kind of system that would compete with WESTLAW and LEXIS in terms of one-stop shopping for judicial opinions and statutes. That is unlikely to be cost effective at the present time.

The difficulty in arranging appropriate public access and public advantages from the technology, and preserving an appropriate level of diversity between public and private-sector activities, is that if marginal price costing is adopted as a uniform requirement for agency electronic information, one in effect forces Government agencies that have invested heavily in capital for these electronic information technologies, into dumping the information on the market in a way that will discourage private sector investment.

I don't know of anyone yet who has figured out the solution to that problem. If an agency uses the state-of-the-art technology for its own access to the data bases, it will have already spent the money for user friendly software, for the hardware and, in many cases—for agencies that have field offices all around the country—will have spent the money for a substantial communications infrastructure so the agency personnel can easily get access to the information. If you are not going to permit the agencies to price so as to recover any of the cost of that capital information but force it to price at marginal cost, then you have made it almost impossible—indeed you have made it impossible under those assumptions—for a private-sector vendor to compete in that marketplace. You have forced the agency into a position of selling the services, in a way that does not permit recovery of the capital investment.

We need a further period of experimentation and close attention to the alternatives in this area to see exactly how pricing alternatives work with Freedom of Information Act access to the software and to the programming.

In conclusion, Mr. Chairman, I would once again like to commend the subcommittee and say I hope the subcommittee will continue to provide a forum within which the different interests can, if not exactly develop consensus, at least come closer together on these important issues.

Thank you.

[The prepared statement of Mr. Perritt follows:]

Testimony of Henry H. Perritt, Jr.

Professor of Law
Villanova University School of Law

Before the Government Information, Justice and Agriculture Subcommittee of the Committee on Government Operations of the United States House of Representatives.

July 11, 1989.

Mr. Chairman, I appreciate being invited to testify in these oversight hearings before your committee. The subject of electronic information policy for the federal government is an important one. A growing portion of the universe of government information is stored and communicated in electronic rather than paper form, but the statute and case law and formal written policies covering government information mainly address paper information. Unless public policy evolves in a suitably comprehensive way to address electronic information, federal information policy will apply to a progressively shrinking universe of paper information.

I am Professor of Law at Villanova University School of Law. My substantive legal specialties are labor law and administrative law. I have a bachelor's degree in engineering from MIT and a master's degree from management from the same institution, and have followed the evolution of computer technology closely since the early 1960s. I do not appear today in a representative capacity. I offer my individual views developed primarily in the course of preparing a report and recommendations for the Administrative Conference of the United States,[1] which led the Conference to adopt recommendations on December 7, 1989,[2] and in authoring a 775 page book, How to Practice Law with Computers, released in December, 1988.[3]

My testimony elaborates on the following five propositions that should guide electronic information policy for the federal government.

First, it is inevitable and appropriate for the government to add value to electronic information.[4]

Second, there is no reason to redraw the boundary between government and private sector publishing and distribution roles in the electronic arena.

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[1] H. PERRITT, ELECTRONIC ACQUISITION AND RELEASE OF FEDERAL AGENCY INFORMATION (Oct. 1, 1988).

[2] Federal agency use of computers in acquiring and releasing information (Recommendation 88-10), 54 Fed. Reg. 5207, 5209 (Feb. 2, 1989), to be codified at 1 C.F.R. § 305.88-10.

[3] Practising Law Institute, New York.

[4] Adding value refers to enhancing functional utility, by changing organization, formats or developing and making available retrieval software, hardware, or media.

Third, Freedom of Information Act concepts can be applied to electronic information with little change; electronic information ought to be treated under the FOIA as though it were paper information.

Fourth, the speed and low cost with which electronic information can be duplicated makes it difficult for value-added publishers to earn a reasonable return on their investments in electronic information technology. Electronic information policy must recognize this and include appropriate measures to promote investment in adding value to electronic information.

Fifth, pricing flexibility, combined with implementation of sound FOIA interpretations, is the best way to assure that the public gets maximum benefit of electronic information technologies at the lowest cost.

Before considering each of the five propositions in somewhat greater depth, I would like to note the significance of the contribution made by the subcommittee and its staff director Robert Gellman in focusing electronic information policy issues. The subcommittee's 1986 report,[5] and Mr. Gellman's availability to policy analysts, are in the best traditions of congressional policy formulation. Also, Chairman Wise's H.R.2381, as introduced on May 16, 1989, is a useful step in making information policy principles more concrete. I particularly endorse the proviso in Section 2 of the bill, which requires executive branch policy to "reflect the importance of maintaining a diversity of sources for, and a competitive market in, public information products and services . . . .," and the requirement that agencies make available to depository libraries public information in electronic form. OMB also is advancing public policy by integrating its various statements of information policy,[6] and by reducing detailed pre-approval requirements for electronic information products.[7]

The subcommittee's report did a good job of explaining that certain characteristics make information an unusual economic good. In particular, the fact that information can be duplicated at relatively low cost, without depriving the original owner of his or her use, weakens the validity of the traditional economic assumption of scarcity. Ease of duplication is a characteristic of all kinds of information whether recorded and communicated on paper or electronically. Electronic media and techniques just intensify the characteristic.

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[5] Committee on Government Operations, House of Representatives, Electronic Collection and Dissemination of Information by Federal Agencies: A Policy Overview, H.R.Rep. 99-560, 99th Cong., 2d Sess. (1986).

[6] See 54 Fed.Reg. 25554, 25555 (Jun. 15, 1989) (proposing to incorporate OMB Circular No. A-3 into Circular A-130 after extensive revisions to both).

[7] Id.

I. It is inevitable and appropriate for the Government to add value to electronic information.

Certain characteristics of electronic information set it apart from paper information. It is easiest to explain these special characteristics by considering a comparison between paper publishing and electronic publishing of government information. The same comparison helps explain the important idea of *adding value* in the electronic information policy debate.[8]

Consider a rule recently adopted by the Occupational Safety and Health Administration limiting occupational exposure to benzene.[9] Using an agency rule as an information product example makes it easier to explore the added value concept, without being encumbered by technical aspects of the structure of more specialized information such as a Federal Maritime Commission tariff or an SEC filing. The concepts explored in the context of an OSHA rule are, however, generic, and apply to a USDA crop report or to a Supreme Court opinion.

The benzene rule and its preamble constitute a substantial document, approximately 130,000 words, the equivalent of 550 typewritten pages, or about the size of a typical hardbound book designed for commercial sale. The rule and its preamble took 119 pages in the Federal Register. There is considerable interest in the information constituting the rule and OSHA's justification for it. Employers using benzene are subject to civil and criminal penalties and having their businesses shut down if they do not comply with the rule.[10] Earlier versions of the rule were litigated in the Supreme Court of the United States because of their importance in implementing certain statutory concepts in the Occupational Safety and Health Act.[11] Many people want to have ready access to the information contained in the rule and its preamble and few people would argue that OSHA lacks a legitimate interest in promoting wide public availability of the rule.

Now, without regard to electronic media, consider the ways in which value can be added to the raw information representing the rule.

A first, basic, form of value embodied in all written forms of the rule is taken for granted by most people, but is nevertheless important: This form of value is ordinary typographic format information, such as paragraph breaks, use of italics, footnotes, subtitles, and running headers and footers on multi page material. These typographic features make is easy for readers to browse the printed material. Labelling particular parts of the benzene rule with subpart designations and section numbers adds a similar form of value at a more formal level. These features permit unambiguous and efficient reference to particular parts of the document.

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[8] Releasing information with significant added value sometimes is called *retailing*, while releasing information with significantly less value added is called *wholesaling*.

[9] 52 FED. REG. 34,460 (1987), to be codified at 29 C.F.R. § 1910.

[10] See generally 29 U.S.C. § § 662, 666 (1982) (injunctions and civil and criminal penalties for violation of OSHA standards).

[11] Industrial Union Dep't v. American Petroleum Institute, 448 U. S. 607 (1980).

A second, substantive, form of value was added by OSHA when it reported a statutory authority for the rule and specified the titles and sections of the Code of Federal Regulations to which the rule will eventually will be codified. These cross references make it possible for people to know of the rule's existence by starting with the statute authorizing it, or by starting with the body of other rules issued by the Occupational Safety and Health Administration.

A third, elementary, form of added value is simply to print the rule on paper in a way that is easy to read. This value was added in the ordinary course of OSHA's rule making process before the Assistant Secretary of Labor for Occupational Safety and Health signed the rule.

A fourth form of added value, also elementary, is to make multiple copies of the rule so that everyone who wants a copy can have one. This can be done on request by using photocopiers or, in the case of a legislative rule, by printing the rule in the Federal Register. OSHA added value at this stage by submitting the rule to the Office of Federal Register where it was made available to the public and then sent to the Government Printing Office where it was typeset and printed a few days later in the Federal Register.

A fifth type of value was added when the Government Printing Office distributed copies of the Federal Register to subscribers, to GPO book stores around the country, and to federal depository libraries.

All of these types of value, ranging from simple sentence and paragraph structuring through fairly sophisticated delivery of a printed booklet, were added by the government.

Other types of value have been and will be added by the private sector, without considering anything other than printed media. Legal research services like the Bureau of National Affairs and Commerce Clearing House will reprint the rule and distribute it as part of their subscription services, adding additional value by superimposing proprietary indexing numbers on the Federal Register and CFR conventions supplied by the government, changing type faces, type sizes and pagination, and perhaps adding annotations that help subscribers find related statutory, regulatory, and case law material. These private services may begin with information printed by the government, simply reprinting images of the actual pages produced by the government, or rekeying and retypesetting the information.

Now, consider each value added step in publishing the same information electronically. The starting point for electronic publishing is a computer file with the text of the benzene rule in it. The first two steps of adding value already have occurred, represented by typographic information from OSHA word processing software or GPO typesetting software. Private sector electronic publishers may begin with a computer file obtained from the Government Printing Office or from OSHA, to which they add their own formatting information. Additional electronic value is added when the electronic publisher supplies typographic and topical indexing information to the electronic file. This may be as simple as translating typesetting or word processing codes or it may involve marking and extracting words for an inverted index necessary to permit free text search.

Next, intermediate between steps two and three, the electronic text of the rule must be put in a database from which it can be extracted according to pre-existing retrieval tags, such as the Federal Register citation. WESTLAW, for example, permits retrieval by Federal Register citation, by CFR title and section number, and by free text search query. The database structure and retrieval software are significant amounts of added value.

For the third through fifth steps, relating to printing multiple copies and distributing them, the electronic publisher must choose between dialup telephone access or duplication of the information on magnetic or, more likely, optical disks. If dialup access is the distribution medium, the electronic publisher must arrange for an adequate telecommunications interface to permit the expected number of simultaneous callers to access the database. If duplication by a physical magnetic or optical medium is intended, the publisher must invest in hardware and software for disk mastering and duplication.

The fifth major type of value added is the the distribution mechanism. This is the communication infrastructure for dialup access, usually provided by a public data network such as Tymnet or Telenet. For physical distribution, electronic publishers usually use the same common carriers, such as the U. S. Postal Service or Federal Express, that a paper publisher uses.

This comparison helps show the appropriateness of applying the same policy concepts to electronic information activities as paper information activities. Lower levels of electronic release, such as access and disclosure, differ from higher level dissemination[12] only in the amount of value added. Access provides for release after step two, with reproduction on paper being done only on request. Disclosure provides for release at step three, with reproduction being doing in advance or at least at facilities readily available to the public. Dissemination implies more active movement to steps four and five.

II. There is no reason to redraw the boundary between government and private sector publishing and distribution roles in the electronic arena.

While the debate over federal electronic information policy has produced broad agreement on many concepts and issues, the debate continues to suffer from an ideological flavor that obscures some of the real issues. For example, it may be more appropriate for the government to add some kinds of value than other types. Government agencies routinely depend upon the U.S. Postal Service, United Parcel Service and Federal Express to add value at the physical distribution step of paper publishing. No one would seriously propose that an agency with a new paper information product should start up its own postal service from scratch. Yet, suggesting that agencies depend upon the private sector for performing a similar distribution function with electronic information can be attacked as being too deferential to the private sector.

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[12] The ACUS recommendations use the term electronic *access* to refer to the lowest level of electronic release; the ability to obtain agency information; communicating information to consumers; the term electronic *disclosure* to refer to an intermediate level of electronic release; making information available electronically to the public at one or only a few places; and the term electronic *dissemination* to refer to the highest level of electronic release; using electronic means to make information widely available to the public at places where it is used. Electronic publishing is the same thing as electronic dissemination.

On the other hand, agencies routinely add value in the form of typographic features and indexes; yet similar types of electronic value added activities are attacked simply because the medium is electronic and the value to be added is the electronic equivalent of printed indexes or typographic features. In its latest release on developing executive branch electronic information policy guidelines, OMB quite appropriately recognizes that the government should add value to electronic information in certain cases, including software development.[13]

Whether the government ought to engage in the activity should depend on something other than applying the label, "value added." As my ACUS report and the ACUS recommendations suggest,[14] agencies should work from a baseline of electronic information activity. They should define, with particularity, costs and benefits of making existing information products available electronically. The electronic equivalent of an existing product should be defined in the terms of equivalent added value under the typology suggested in this testimony. Development of new electronic information products for which there is no existing paper counterpart is desirable in many cases. The desirability of specific products should be evaluated under the same basic cost/benefit approach, and so should defining the boundary between private sector roles.

Suggesting a cost/benefit approach is not a suggestion that decisions be made mechanically only on factors that can be quantified and expressed in dollar terms with an existing market mechanism. Rather, cost benefit analysis is a way of thinking about problems that imposes on the proponents of a position an intellectual obligation to articulate particular costs and benefits and to explain why the benefits exceed the costs, compared with alternatives. It is as flexible as the arbitrary and capricious standard of judicial review in administrative law,[15] which likewise is essentially a burden of articulating the basis for a decision and reasons for preferring one alternative over another.

III. The speed and low'cost with which electronic information can be duplicated make it difficult for value-added publishers to earn a reasonable return on their investments in electronic information technology. Electronic information policy must recognize this and include appropriate measures to promote investment in adding

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[13] 54 Fed.Reg. at 25557.

[14] 54 Fed. Reg. at 5209 (explaining recommendations C and D).

[15] See Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co., 463 U. S. 29, 43 (1983) (explaining arbitrary and capricious test); see generally Section of Administrative Law, American Bar Association, *A Restatement of Scope-of-Review Doctrine*, 38 ADMIN. L. REV. 235 (1986)

value to electronic information.

Uncertainty discourages investment. Uncertainty abounds with respect to electronic information activities. Some sources of uncertainty are inevitable: the rapid pace with which technology is changing; and the difficulty in projecting accurately the directions in which embryonic markets will evolve.

But other sources of uncertainty are influenced by government electronic information policy. The area of uncertainty mostly influenced by government policy pertains to market share. If one considers investing and adding value to electronic information, the revenue stream to be produced by that investment depends upon the size of the market for the result of information product in the investors share of that market. If one must price a particular electronic information product at, say, $50 per hour of access time by dialup link, and someone else can offer essentially the same product for $25 per hour, one will never recover the investment. If one believes in advance that this will happen, one never makes the investment.

So the investment-discouraging uncertainty is driven by fear that new market entrants will undercut the prices necessary to recover the investment in added value. This concern leads entrepreneurs in both public and private sectors to seek protection for markets in which they plan to invest. For a public sector entrepreneur, like MEDLARS, this means not releasing the raw information at a price private sector producers can use to undercut prices for the government-sponsored products. This was the controversy in *SDC Development Corp. v. Mathews*.[16] In other cases, a private sector producer will invest in a way that serves the public interest only if given assurances that its market will be protected by the government. This is the core controversy in *International Computaprint Corp. v. U.S. Department of Commerce*.[17]

The need to encourage investment tempts agencies to define prices and product characteristics by contract, which protect particular markets or preserve certain pricing policies. The ACUS recommendations noted that the need to encourage investment may warrant agencies entering into an exclusive arrangement providing a private sector vendor with a preferential right to electronic information, but that such arrangements may be inconsistent with FOIA duties.[18] An obvious tension exists between the goal of promoting investment and the goal of encouraging diversity of products in a competitive market. It may be desirable to permit some degree of experimentation with contract approaches to shape investment and encourage appropriate private sector pricing, rather than prohibiting preferred arrangements altogether.

V. Freedom of Information Act concepts can be applied to electronic information with little change; electronic information

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[16] 542 F.2d 1116 (9th Cir. 1976) (permitting National Library of Medicine to deny FOIA request by commercial publisher to MEDLARS database).

[17] Civ. Action No. 87-1848, memorandum op. (D.D.C. Aug. 16, 1988).

[18] 54 Fed. Reg. at 5211 (recommendation F).

ought to be treated under the FOIA as though it were paper information.

The FOIA was written with paper records in mind. The problem is to apply the Act to information maintained in electronic form. The starting point, as ACUS recommended,[19] is to recognize that a "record" includes information maintained in electronic form. A change in the form in which information is kept, indexed, and retrieved should not erode the spirit of the FOIA. Moving from the basic idea that records in electronic form are FOIA "records", agencies should avoid artificial interpretations of FOIA concepts that increase the frequency with which agencies decline access altogether, or force requesters to take data in gross in forms usable only by the technologically sophisticated. Agencies should not deny access to electronic data on the grounds that that retrieval of the electronic information is equivalent to creation of a "new" record, or that programming is required for retrieval. Agencies should use a standard of reasonableness in defining the level of programming appropriate to fulfill FOIA requests, and in determining the extent to which FOIA requesters may ask the agency to produce data organized in formats other than those used by the agency in the regular course of its operations. Agencies should be able to recover the costs of complying with FOIA requests, including programming costs, in a manner consistent with the Freedom of Information Reform Act of 1986 and related OMB guidance.

Certain interpretations of the FOIA are incompatible with an agency's limiting its role in release of electronic information. Agencies almost certainly cannot transfer raw electronic information only to a preferred intermediary. Nor is it clear how agency indexing and retrieval software can be exempted from FOIA disclosure, and these are paradigmatic value-added items.

IV. Pricing flexibility, combined with implementation of sound FOIA interpretations is the best way to assure that the public gets maximum benefit of electronic information technologies at the lowest cost.

Prices are important sources of information about cost and benefits, and they can be powerful policy tools. As my ACUS report explains in more detail, prices charged by private sector electronic information producers can be important indicators of the comparative costs and advantages of publicly provided versus privately provided electronic information.[20] Existing or projected private-sector prices for proposed electronic information products should be compared with agency estimates of information product costs.

Government costs higher than private sector prices for the same electronic information product indicate the existence of private sector efficiencies or cross subsidies that cannot, or should not in most cases, be matched by the government.

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[19] 54 FED. REG. at 5210 (recommendation A).

[20] See ELECTRONIC ACQUISITION AND RELEASE OF FEDERAL AGENCY INFORMATION, note 1 *supra*, at 101, 116 (sections V(F)(3), V(F)(4)(c)).

Competing government information products at higher cost-based prices either will not be used or will result in higher costs to information consumers for products providing the same benefits as lower-priced private products. The government should not compete with respect to such products. Exceptions to this rule of thumb must be justified by the peculiar nature of the information and special needs for its wide dissemination.

Government costs significantly lower than private sector prices indicate either oligopolistic or monopolistic pricing by the private sector, or government efficiencies resulting from capital investment in internal processing systems. In either event, such a disparity between costs and prices suggests public gain from direct government electronic publishing initiatives. The prices charged by the government for electronic information products also can be effective ways of managing competition and defining roles. For example, substantial discounts for large volumes of information reenforce the government's role as a wholesaler and make it likely that private sector providers will offer retail information products that make government information more widely available in formats and using distribution techniques most useful to particular markets. On the other hand, higher prices for larger quantities of information reenforce the government's role as a retailer and discourage private parties from using the government's information to launch their own retail electronic information products. Charging high prices for increasing quantities of information runs the greatest risk of conflict with FOIA fee provisions.

Even if the government becomes an electronic publisher of some information products, choices still can be made regarding public and private sector roles. The government not only can retail to some degree but also can wholesale to private sector information resellers who create retail information products different from those offered by the government. This is expressly contemplated by ACUS Recommendation C(2). For example, agencies might publish particular electronic information products, while still preserving opportunities for private enhancements such as "one stop shopping" for wider categories of information or improved search and retrieval techniques. The market might support higher private sector prices because of a demand for products with more value added.

Mr. **Wise**. Thank you very much.

On Wall Street, they talk about crowding out, meaning Government borrowing makes it more expensive for private companies to borrow.

Is there a crowding out in the information business as well? If the Government offers a product or threatens to offer a product, will that crowd out the private sector?

Mr. **Massa**. Yes, I think the previous speaker to a large extent did respond to that by saying that in fact if the Government does make, if you will, a dump of its information in that sense, the private sector will go elsewhere, and my closing comment in which I said that indeed that kind of an activity would have a very chilling effect. The private sector is in the information business, and it is a business, and there has to be a return on the investment in order to justify it.

I would hate to think where we would be today with regard to access to Government publications if it weren't for what the private sector has provided in the way of access. I would venture a guess that if the same conditions existed in 1970 that exist today, our company would think twice about getting into this business, for the simple reason that it is providing access in a way that is very important to a very large segment of the population, but when there is a threat of the Government providing a kind of product that may compete with it head on, then there is a question of whether that is a wise investment to make.

Mr. **Wise**. Anyone else?

Mr. **Perritt**. Mr. Chairman, I think that there are lots of hypothetical examples of how crowding out can occur. If the Government offers an attractive product at a price lower than the private sector can recover its investment under, then the private sector won't get into the business.

But I think we need to be careful about what we do with that hypothetical possibility. At the extreme, for example, we could say that any form of electronic information potentially would crowd out paper information because it is better, at least in some cases it is better, and there would be a demand for that in lieu of paper information. And yet I don't think anyone would propose that the Government be prohibited from making available electronic information because of that risk of crowding out.

So I think it would be preferable not to erect any kind of artificial requirement that the Government stay its hand and withhold public benefits of investment in information technology. Instead we should make sure that an agency in a particular case can demonstrate that there are costs savings and benefits to be gained from a new electronic information product, that the full costs have been taken into account. Full costs include the costs of maintaining a system over time. Otherwise, we create the risk that the Government discourages the private sector and then doesn't follow through, as has happened in some cases with paper information, with the annual reports of agencies that aren't available for a couple years after the fact, and the example given earlier with respect to certain congressional materials that are not timely released.

Mr. **Wise**. Is there a Gresham's law of Government information? Will poor-but-cheap Government information product drive a high-quality, more expensive private-sector product from the marketplace?

Mr. **Terragno**. First of all, I would hope the Government wouldn't put together a poor information system. I think if they were to try to develop poor information service, and poor and cheap are relative terms, they wouldn't bother to do it because I do think in that case it would not drive out a higher priced, higher quality system.

Information does have valve. There must be quality to a system, there must be quality of information, as there is quality, of other products and services. We would be very concerned from the private side if the Government were to put together a so-called poor and cheap information product, but I do not really think that it would drive out a higher priced, higher quality system.

Mr. **Wise**. Anybody else care to take that on?

I am going to, in the interest of time, ask the panel if you would respond to some questions in writing that I have, and we will send them to you.

Mr. McCandless.

Mr. **McCandless**. Thank you, Mr. Chairman.

Mr. Massa, I found your statement very interesting. I would like to expand on it, if I may.

You pointed out you were 1 of 21 members of an advisory group that put together "Informing the Nation: Information Dissemination in an Electronic Age," and you went on to talk in terms in your presentation about what encounters misinformation in the report, you further went on to say much of what is true in those chapters, you referred to a summary as either irrelevant or wrongly interpreted.

You went on to say that there is little use for the contributions of the minority of the advisory board members chosen from the private sector information industry and that the report has a tone of indifference to the conditions needed to promote private-sector investment in the information access systems.

For someone who served on that advisory committee, would you kind of capsulize what it is here you found—you obviously had meetings, as committees do, and discussions. You asked opinions back and forth in various forms and manners. One comes up with the impression that you were left out in the street, so to speak, and that nothing much happened that had Paul Massa's imprint on it.

Mr. **Massa**. If I can address and respond to your question first of all by saying we were on an advisory panel. We did not put together the report. I wish to be clear on that point. There were several meetings that were held of the advisory panel members together with the staff. Usually at those sessions we were given material, often at the session, to which we were expected to respond.

In many cases the material was not distributed beforehand. In some cases it was handed out right at the table, in some cases even the most critical material. It made it difficult to respond at the sessions. It was for that reason many of us did write letters. As far as having my personal imprint at the report, that was not my objective in the beginning in agreeing to serve on the panel and it is not my criticism today.

My criticism today is that the call for Government information systems is based on what I consider to be inaccurate and misleading information and I cited some of that information in the table, of cost information that I considered to be inaccurate. Those of us who are in the information distribution business would call it inaccurate.

I would also say that even afterward in having a discussion with the OTA assistant director on the report, several of us from the private sector did meet with him, there was no order given that somehow or another the report may have not provided for our views. In fact, we had said throughout the sessions, we are at odds with you on this.

I guess my objection is that we devoted a considerable effort and put in a lot of time in what I thought was going to be a report that would produce some worthwhile substantial recommendations along these lines and, in fact, what we find, particularly with regard to the items I mentioned, were suggestions that it not take into consideration existing private sector information systems as they now exist and are available to the public. It did not give a fair hearing to anything regarding cost analysis, distribution, et cetera.

I am not looking for anything to put my personal imprint on.

Mr. McCandless. You talk about the report usually marked by qualifications that portrayed the private sector as little more than an interest group whose concerns are to be brokered by Congress along with those various other interests. You talked in your opening remarks about the various types of distributors of information in the public sector and how they are used.

Isn't there a conflict between your report and our coming through the Congressional Quarterly that comes from the private sector? I don't see how you come up with little more than an interest group when these things are obviously in everyday life.

Mr. Massa. When I hear comments that say how can we distribute Federal Government information without in effect closing out the private sector, there is an underlying presumption in that question that somehow or another the private sector is an interest group to be accommodated when it comes to the distribution of Federal information.

I would submit that the private sector with regard to the distribution of Federal information is not part of the problem but a part of the solution and a very important part of the solution.

There have been remarks made. I think one of the comments excised in this report we objected to was in the final draft which regarded somehow the private sector as requesting special privileges with regard to access to Federal information.

We don't ask that. We don't ask that the private sector be given private access to Federal information. The company I head certainly has no such arrangement with the Federal Government. We don't have a single contract with regard to access of Federal information. Anyone can get into this business and try to produce an index to committee hearings, prints, reports, and do it faster, better, and cheaper if they believe they can do it.

We are saying that is the concept of a free and open market.

Mr. **McCandless**. Mr. Terragno, Mr. Perritt, do you have any comments?

Mr. **Terragno**. I pass.

Mr. **Perritt**. I don't think I have anything to add.

Mr. **McCandless**. I was interested in your discussion about the different types of electronic—how should we say, gimmicks—they are not gimmicks, they are means of conveying information. You held up the disk.

Mr. **Massa**. Yes. This happens to be an index to information of committee prints, hearings, reports, that our company produces.

Mr. **McCandless**. Did I understand that you felt that this type of dissemination vehicle was somewhat substandard to a printed document?

Mr. **Massa**. No. What I said was proven durability when comparing it to microform has not been shown. There has been testing to show the length of durability to microforms. We like to think that in the microforms that we sell we will guarantee them for 400 years or double your money back. There is no such guarantee that can be given on that. I don't know how long that will last and I would not give the same guarantee on CD that I would give on microform.

Mr. **McCandless**. Is microform a synonym for microfiche?

Mr. **Massa**. It can be microform or microfiche. That is a 105 millimeter card.

Mr. **McCandless**. So it is a matter of technology is yet to be proven?

Mr. **Massa**. It is yet to be proven in terms of durability. My objection to the figures used here related to cost primarily. The example I used was to say that $10.05 is all it will cost the Government to distribute an information system——

Mr. **McCandless**. I understand that part. I am somewhat disappointed in the approach that a percentage to have been taken by certain members of this very important research committee, the Information Dissemination Committee and then the fact that your questions, which I am sure were very business oriented, were not answered by the Mr. Woods that you referred to.

He was the staff person involved?

Mr. **Massa**. I think he was project director.

Mr. **McCandless**. Did you discuss it verbally with Mr. Wood?

Mr. **Massa**. No. When we requested a meeting, we met with the assistant director of OTA, John Anton. I was informed that letters of that kind were not answered.

Mr. **McCandless**. What would be the example of a type of letter that you may have written?

Mr. **Massa**. Several of the things I read you in my comments this morning are directly from those letters. I would be happy to provide you those letters directly if you would care for them.

Mr. **McCandless**. Do any of the other members have any comments?

Mr. Terragno, have you read the report that we have been talking about?

Mr. **Terragno**. The OTA report—no, I have not read it.

Mr. **McCandless**. Mr. Perritt, have you had an opportunity?

Mr. **Perritt**. Yes, I have, Congressman.

Mr. McCandless. What are your general impressions?

Mr. Perritt. My impression first of all is that it is a valuable contribution to the dialog in this area. My second impression is that there is a subtle preference that I discern from the report—other readers might discern differently—in favor of a more active Government role and a less prominent private sector role in disseminating electronic information.

Mr. McCandless. And the basis of that would be what in the report? Coming to the conclusion that the one would be better than the other?

Mr. Perritt. I don't find in the report any explicit defense of any shift in the boundary between public and private activities.

Mr. McCandless. Do you think there is any valid tie in the thought process that the Federal Government would print everything whereas the private sector would print what they felt was salable and therefore there would be some type of an editorial selection as to what would be printed in the private sector versus what would be printed in the public sector?

Mr. Perritt. Congressman, I think it is likely that the markets would evolve to resemble that state of affairs but I think the real question is not what is printed so much as it is the types of value that are added to the electronic information and by whom.

The difficulty arises when a Government agency proposes to add value at a cost that someone like Mr. Massa thinks is greatly understated, like the CD-ROM. Or else the agency proposes to add information of a type that does not serve the public interest and that ought to be done by the private sector.

In contrast with that, if the Government agency has already made the investment in the software to provide information in electronic form, then it is hard to say the agency artificially should deny the public the benefits of access to that.

Mr. McCandless. Mr. Massa.

Mr. Massa. No. I would not disagree with what the previous speaker has just said.

Mr. McCandless. Thank you gentlemen.

Thank you, Mr. Chairman.

Mr. Wise. I want to thank the panel very much. As I say, we will be submitting some questions to you. I am going to declare a 3-minute recess.

[Recess taken.]

Mr. Wise. The subcommittee is back in session.

For our final panel, I am delighted to have Mr. Joseph E. Jenifer, the Acting Public Printer of the Government Printing Office. Mr. Jenifer, we appreciate the time you spent preparing your statement. It will be a part of the record. We have a practice of swearing in all witnesses, if you have no objection.

[Witnesses sworn.]

Mr. Wise. I would like you to summarize your statement and I look forward to asking some questions.

STATEMENT OF JOSEPH E. JENIFER, ACTING PUBLIC PRINTER, U.S. GOVERNMENT PRINTING OFFICE, ACCOMPANIED BY GRANT MOY, GENERAL COUNSEL, AND MARK SCULLY, DIRECTOR, LIBRARY PROGRAMS SERVICE

Mr. JENIFER. Thank you, Mr. Chairman, for your invitation to appear before this subcommittee. I feel as if the issues that pertain to Federal information dissemination are very important for the future of the GPO and the Federal Government as a whole.

With me is Grant Moy, general counsel, and Mark Scully, director of the GPO Library Programs Service which administers the Depository Library Program.

I will briefly summarize my prepared remarks which I have submitted for the record. The publication last fall of the OTA report on Federal information dissemination which was entitled, "Informing the Nation," has discussed the issues. Electronic technologies today are making significant inroads in Federal information dissemination, creating new opportunities for efficiencies, effectiveness, and economy in the Government's information activities and expanding the opportunities for access to Government information.

Although it was enacted in the preelectronic era, I believe the intent of our organic legislation, title 44 of the U.S. Code, covers emerging technologies. These can make a significant contribution to the reduction of costs and expansion of information made available to the public.

We are well positioned today to accommodate the ongoing transition from paper to electronic formats. The OTA report outlines an alternative future for GPO that foresees the provision of a mixture of conventional and electronic products and services.

In many respects this alternative is already a reality. In addition to traditional ink-on-paper formats, we are seeing magnetic tape. Our sales program will soon offer CD-ROM formats. For the Depository Library Program we have run a successful test for CD-ROM dissemination and pilot tests will be soon underway for online dissemination.

We have also tested transmission of the Federal Register via satellite dish. We need congressional resolution of what the institutional structure of Federal information dissemination will be.

There has been speculation that the GPO may not be the appropriate agency to provide electronic information dissemination services.

I would submit that aside from GPO, few other Federal agencies possess the technological capability and expertise as well as the established track record to provide the range of information products and services that GPO is capable of providing.

More important, no other Federal agency I am aware of has the statutory mandate to insure the effective provision of information that is present in the laws that govern GPO today.

This age of sweeping technological change is producing a wealth of ideas and concepts to adapt that change to public policy needs. I welcome this opportunity to explore and examine these ideas. I look forward to working with this subcommittee to improve the provision of information services for the Government and the public.

Mr. Chairman, this concludes my opening statement. I would be pleased to answer any questions that the subcommittee may have.

[The prepared statement of Mr. Jenifer follows:]

United States Government Printing Office
Washington, D.C. 20401

NOTICE

This document is not to be released prior to the hearing.

STATEMENT OF JOSEPH E. JENIFER
ACTING PUBLIC PRINTER
BEFORE THE
SUBCOMMITTEE ON GOVERNMENT INFORMATION,
JUSTICE, AND AGRICULTURE
OF THE
COMMITTEE ON GOVERNMENT OPERATIONS
HOUSE OF REPRESENTATIVES
ON
FEDERAL INFORMATION DISSEMINATION POLICIES
AND PRACTICES

July 11, 1989

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE:

I am Joseph E. Jenifer, Acting Public Printer of the Government Printing Office (GPO). Under the public printing and documents statutes of Title 44, United States Code, GPO provides for the reproduction of information for all three branches of the Federal Government through inhouse printing and commercial procurement, and disseminates that information to the public through the programs of the Superintendent of Documents. I am pleased to be here today to present GPO's views on Federal information dissemination policies and practices.

Background

The importance of access by the American public to information about the activities of their Government has been widely acknowledged since the Nation's founding. The belief in the importance of an informed citizenry was translated into specific constitutional requirements for the publication of Government information, and a policy for public printing was implemented as early as the first session of the First Congress. In the early years of our Government, Congress experimented with a variety of measures to provide for the economical production of the Government's printing needs. These contract-based systems proved unsuccessful, and in 1860 Congress turned to the centralization of Government printing in GPO.

A policy for disseminating information produced by the Government emerged as a natural corollary to public printing policy. In 1813, Congress authorized the distribution of Congressional documents to the libraries of each college and university, and to each incorporated historical society in each state, which were to serve as Federal depositories for the use of the public. Various officials performed distribution to the depository libraries in the succeeding years, including the Secretary of State, the Clerk of the House of Representatives, and the Librarian of Congress. In 1858 and 1859, authorization was provided for Congressional designation of additional libraries to serve as depositories. In 1869, the responsibility for depository distribution was transferred to the Superintendent of Public Documents, which was created within the Department of the Interior, and Executive Branch documents were also authorized to be distributed.

By the end of the 19th century, lack of control over the distribution of public documents and evidence of abuses in documents distribution compelled Congress to re-evaluate Federal information dissemination policy. What emerged was wholesale reform of the Government's printing and distribution functions in the Printing Act of 1895. The Act consolidated all of the laws governing GPO and Federal printing in one statute, bringing under GPO control other Federal printing plants then in existence and providing for the production of virtually all other Federal printing at GPO itself.

Significantly, the Act relocated the Government's information dissemination function in GPO. The new Office of the Superintendent of Documents retained the responsibility for the distribution of documents to depository libraries nationwide, and was given additional authorities to improve this program, including the responsibility to conduct library inspections. The Act further consolidated all documents distribution and control in the Superintendent of Documents, who was authorized to: (1) have general supervision of the distribution of all public documents; (2) sell at cost any public document in his charge; (3) prepare indexes of Government publications; and (4) issue a Monthly Catalog of Government publications. By placing the Superintendent of Documents within GPO, Congress created a system that facilitated the efficient selection of publications for public distribution from the comprehensive body of documents printed by GPO.

In 1968, the 1895 Act and subsequent modifications--most notably the Depository Library Act of 1962--were revised, codified, and enacted in Title 44 of the United States Code. Since then, GPO operations have undergone a significant transformation, beginning with the transition from conventional hot-metal typesetting operations to electronic photocomposition, undertaken between 1975 and 1982. In that period, GPO completed the technological conversion in its prepress production processes for all publications, helping to pave the way for the introduction of related technologies throughout the Government, since the system made possible the increased submission of text and other publishing data in electronic media, rather than manuscript. In general, the transition has resulted in Governmentwide improvements in the quality and timeliness of information service provision, an expanding variety of information services, and continuing reductions in information services costs.

Improvements to GPO's operations since then have included enhancements to GPO's automated prepress systems, such as scanners and an automated electronic job shop, that have improved productivity. GPO has accommodated the trend toward an increasing concentration of printing and publishing functions in Federal agencies by establishing a dial-up composition system, expanding full-text database publishing, and installing floppy disk conversion systems to facilitate the linkage of on-site publisher operations with GPO's automated composition system. This linkage has improved product and service options substantially for Federal publishers. GPO has also incorporated improvements in the press and binding areas featuring electronic technology enhancements.

GPO has coupled these improvements in information reproduction services with the inauguration of dissemination services for electronic information products. GPO database tapes containing published Government information have been available for sale to the public for several years, and in 1987 these tapes were incorporated into the Superintendent of Documents Sales of Publications Program. Other avenues for electronic dissemination, including CD-ROM formats, are being implemented for both the Sales and Depository Library Programs. To assist customer agencies, GPO has established an Electronic Publishing Management Section within its Customer Service Department to market GPO's electronic services. Marketing efforts have also been established within the Superintendent of Documents area to provide Federal agencies with pre- and post-publication marketing assistance, and to increase public awareness of the availability of Government publications in both ink-on-paper and electronic formats. Today, GPO is on the threshold of providing a significant range of both conventional and electronic information products and services to fulfill the information needs of Congress, Federal agencies, and the public.

Superintendent of Documents Operations

Employing approximately 950 personnel, with a Fiscal Year 1989 budget of approximately $54 million, the Superintendent of Documents today provides information dissemination services through a variety of programs, including: (1) sales to the general public; (2) distribution to approximately 1,400 depository libraries nationwide; (3) distribution to recipients designated by law; (4) distribution performed on a reimbursable basis for Federal agencies; and (5) international exchange distribution to foreign governments which agree to send to the United States similar publications of their governments for delivery to the Library of Congress. In addition, the Superintendent of Documents performs cataloging and indexing services for Government publications. The sales and reimbursable distribution functions are financed by sales receipts and agency reimbursements credited to GPO's Revolving Fund, while the remaining programs are financed annually by the Superintendent of Documents Salaries and Expenses Appropriation.

In Fiscal Year 1988, GPO's Superintendent of Documents operations distributed approximately 107 million copies of Government publications through the Statutory and Reimbursable Distribution Programs (32 million copies), the Sales of Publications Program (27 million), Consumer Information Sales operated on a reimbursable basis for the GSA (21 million), the Depository Library Program (18 million), and distribution (free and sales) of the Federal Register (9 million).

Conventional Printing and Distribution Services

Congress established GPO to fulfill a mission that is basic to our form of Government: printing and distributing information on the deliberations and actions of the Legislative, Executive, and Judicial branches. The public printing and documents statutes of Title 44 were crafted to perform that mission in an economical and cost-effective manner. These objectives remain as sound today as they were when GPO first opened its doors for business in 1861. Thus, where GPO's conventional printing and documents distribution functions are concerned, I think the basic framework of those statutes is sound.

The Office of Technology Assessment (OTA) report on Federal information dissemination, Informing the Nation, found that despite the recent inroads made by electronic technology, there is no evidence of a historical weakness in demand among Federal agencies for GPO's conventional printing and distribution services. To the contrary, OTA found that the majority of GPO's customer agencies are either satisfied or very satisfied with GPO's services, including publications layout, composition, printing quality, printing timeliness, binding, cataloging, marketing/sales, distribution, and depository library services. Sales of publication copies have also increased in recent years, due to various program modifications, and there are indications that recent programs to increase public awareness of depository libraries have led to increased utilization of their collections. Moreover, all available projections show that printing and ink-on-paper media remain the predominant means for Government information reproduction and dissemination today, and are likely to be so for the foreseeable future.

I am concerned, however, that recent efforts to decentralize the provision of conventional Government printing operations, such as the FAR revision of 1987, may impair the Government's continued ability to provide these services on a cost-effective basis. Decentralization would also sever the link that was forged between printing and documents distribution operations in the Printing Act of 1895, increasing the costs of disseminating information in ink-on-paper formats to the public.

There are indications that this link is weakening even under current law. With respect to the Depository Library Program, 44 U.S.C. 1902 provides that "Government publications, except those determined by their issuing components to be required for official use only or for strictly administrative or operational purposes which have no public interest or educational value and publications classified for reasons of national security, shall be made available to depository libraries."

In a 1984 report, however, the GAO found that while most Government publications of public interest are made available to GPO's Depository Library Program, GPO has no means of determining whether an agency has submitted all of the publications it should. The report notes that Federal agencies frequently avoid the responsibility assigned to them under 44 U.S.C. 1903, which requires that they "bear the cost of printing and binding those publications distributed to depository libraries obtained elsewhere than from [GPO]," by failing or refusing to budget for depository distribution. As a result, the Program is plagued with the problem of "fugitive" documents, whose numbers range anywhere from an additional 5 percent of the total number of titles currently distributed by the Program, to significantly higher percentages.

In a decentralized Government printing system, GPO would be in no position to remedy the "fugitive" document problem without a statutory mechanism to make GPO aware of such publications. As a result, the legislative intent of the Depository Library Program would be seriously impaired. A decentralized printing system would also impact GPO's International Exchange Program and Cataloging and Indexing Programs, both of which also suffer from a "fugitive" documents problem.

GPO's Sales of Publications Program would be damaged similarly. Like the Depository Library Program, this Program relies on the ability to make document selections directly from work being processed for inhouse production or commercial procurement through GPO. Without Sales Program access to a centralized document production organization, and in the absence of agency requests for the inclusion of publications in the Program, there would be a decrease in the titles--and thus the amount of Government information--offered for sale to the public. Fewer titles would in turn lead to an increased Program cost burden per title, and consequently higher prices for the information that remains in the Program.

Accordingly, GPO does not view the decentralization of conventional printing and distribution activities as providing any distinct advantage over the current system as established by law.

Technology Impacts

As the OTA study shows, electronic information technologies are beginning to make significant inroads in printing and distribution processes, leading to the generation of substitute information products in electronic formats. At the same time, these technologies are eroding the institutional structure established by Congress to ensure the effective and economical reproduction and dissemination of Government information for

Congress, Federal agencies, and the public. I agree with OTA that Congressional action is needed to resolve the multiplicity of issues raised by electronic information technology and to set the future direction of Federal information policy.

Where GPO is specifically concerned, OTA projects that in the near term (1-3 years) the demand for GPO's current services is likely to be stable. In the mid term (3-5 years), however, OTA found that GPO is vulnerable to decreased demand for paper formats as Federal agencies continue to convert to electronic information technologies. In the long term (5-10 years), the transition from conventional paper products to electronic media substitutes can be expected to accelerate. These projections generally confirm my view of the future direction of GPO's information activities.

In view of these projections, OTA examines three strategic alternatives for GPO's future: (1) a GPO limited to providing conventional printing services to the Legislative Branch only; (2) a centralized GPO providing conventional printing and distribution services to the entire Federal Government; and (3) a GPO providing both conventional and electronic services to the entire Government within a highly decentralized, competitive information environment.

Because of its feasibility and sensibility, I view the third alternative as the most practical and realistic scenario for GPO's future. Under it, GPO would continue to provide centralized conventional printing services through both inhouse production and commercial procurement, expand the range of electronic services to customer agencies, and disseminate information in both paper and electronic formats through Superintendent of Documents programs. GPO also would develop a Governmentwide information index and take an active role in standards-setting and training activities concerning electronic technology.

Overlaid on this alternative is the assumption that a decentralized electronic Government information system will emerge in which Federal agencies will have the option either to use GPO's electronic services or their own systems to reproduce and disseminate information. To function in this environment, GPO would have to become increasingly competitive in its rates and service options. No one will realistically argue that all Government information dissemination should be centralized in any one place, including GPO. But GPO's established track record in this policy area makes it a logical choice to perform many information dissemination functions on behalf of Federal agencies, in terms of efficiency, cost-effectiveness, and economy, and to preserve order in the Government's information operations.

This alternative appears to be the most likely to be realized because, as OTA itself notes, it "most closely aligns with the current development path of GPO." In addition to the modernization activities which have followed GPO's conversion to electronic photocomposition technology, GPO has undertaken several initiatives in recent years to provide non-conventional electronic technology services to Congress, Federal agencies, and the public, to facilitate the continuing transition to electronic information technologies Governmentwide. Among other things, these initiatives have included the acquisition of a CD Publisher System to pre-master data for CD-ROM applications; work on the development of a pilot system for transmitting Federal Register data to subscribers nationwide via FM subcarrier and satellite dish; the sale of Government publications in electronic formats; and the establishment of an Electronic Dissemination Task Force to coordinate ongoing electronic dissemination projects within GPO and provide for a continuing review of electronic dissemination opportunities as they arise.

GPO Provision of Electronic Information Services

Although it was enacted in the pre-electronic era, I believe that the legislative intent of Title 44 embraces new and emerging electronic information technologies. As the OTA report shows, these technologies can make a significant contribution to the reduction of cost, improvement of service, and expansion of information availability in the Government's information functions, three key objectives which were present in Congress' earliest formulations of Title 44 and GPO. This basic authority, however, requires specific clarification in the language of Title 44.

The Joint Committee on Printing (JCP), pursuant to its oversight authority in 44 U.S.C. 103, has directed GPO to provide electronic information products and services. As I noted earlier, GPO has been selling Government publications in electronic formats to the public through the Sales of Publications Program.

In March 1988, GPO requested the views of the JCP regarding the procurement and dissemination of CD-ROM products. In response, the JCP stated that "when a Federal agency publishes Government information in electronic format for mass or general distribution, whether as a complement to or as a substitute for conventionally printed material, the GPO should and must continue to provide its full range of services and support in the production, distribution, and sale of such publications. This, of course, includes the distribution of such electronic Government publications to depository libraries." Thus, as recognized by the JCP, and as affirmed in a recent opinion of

GPO's General Counsel, whenever an agency publishes information in electronic format rather than in conventional ink-on-paper format, it is a "Government publication" and subject to the requirements of Chapter 19 of Title 44.

Electronic Dissemination to Depository Libraries

I am concerned that the Government's continuing shift from ink-on-paper formats to electronic formats in information dissemination may result in a net reduction in the flow of documents to depository libraries unless provisions are made for the depository distribution of electronic information products. These provisions are necessary to avoid undermining the efficacy of the Depository Library Program and annual Congressional appropriations made for that purpose. In addition, provisions are also necessary to provide for the increasing capability of depository libraries to make Government information products in electronic formats available to their users, and to meet the growing public demand for access to those products through depository libraries.

GPO has developed a series of pilot projects to explore the feasibility and determine the costs of disseminating information in electronic formats to depository libraries. These pilot projects, three featuring CD-ROM distribution and two featuring online database dissemination, are models of some of the information services and capabilities that GPO envisions providing in the future.

We have asked the General Accounting Office to monitor and evaluate the cost data generated by the pilot projects so that the full costs of the various methods of electronic dissemination to all depository libraries can be determined. When the pilot tests are completed, we will evaluate whether the current funding mechanism for the Depository Library Program is adequate to meet the financial requirements of electronic dissemination to depository libraries, or whether alternative arrangements will have to be devised to meet the needs of depository users.

There are indications that while CD-ROM dissemination may indeed prove highly cost-effective as a means of information dissemination, it may not be possible to fund online database dissemination within the limits of the Superintendent of Documents Salaries and Expenses Appropriation. The potential costs of such dissemination were discussed in the OTA report, and they are a very real concern to our Appropriations Committees. Accordingly, one of the online pilot projects will also test the feasibility and cost impacts of cost-sharing.

The OTA report discusses a variety of alternatives for electronic depository distribution. Among other things, this discussion clarifies the important point that the Depository

Library Program is and always has been a cooperative effort between the Government and participating libraries to meet the needs of information users. Within this system, the Government has traditionally borne the costs of distributing information to the libraries, while the libraries themselves have borne the costs to house, staff, and otherwise make Government documents collections available to users. In my view, therefore, the partners in this cooperative system should be prepared to discuss alternative methods of cost-sharing as an option to provide for a reasonable and equitable distribution of the costs of access to online database services.

OMB Circular A-130

I have had serious reservations about OMB Circular No. A-130 since it was issued in 1985. These reservations have focused on two major shortcomings in OMB's information policy. The first is that Circular A-130 makes no reference to GPO's statutory responsibilities for providing conventional printing and distribution services for Federal agencies, despite the Circular's purported purpose to assist agencies in "[performing] their information management activities in an efficient, effective, and economical manner." I am also concerned that OMB has made no effort to inform agencies about GPO's capabilities to provide electronic dissemination services. Overall, Circular A-130, as well as OMB's effort to update it with the publication in January of the "Advance Notice," basically ignores GPO's responsibility to provide cost-effective services to assist the information resources management programs of Federal agencies.

I addressed these problems in comments on OMB's January "Advance Notice." With respect to the information dissemination responsibilities of the Superintendent of Documents, I asked OMB to: (1) advise agencies to utilize GPO's Sales of Publications Program to sell electronic publications to the public as an alternative to the proposed user fee system revision; (2) enforce the law requiring agencies to provide GPO with copies of publications printed elsewhere than GPO for inclusion in the Depository Library Program; (3) issue guidelines to Federal agencies for the distribution of electronic information products through the Depository Library Program; (4) issue guidelines strengthening agency compliance with the International Exchange and Cataloging and Indexing Programs, and to encourage agency utilization of GPO's Statutory and Reimbursable Distribution Programs for the dissemination of electronic products; and (5) revise its guidelines prohibiting the addition of access and retrieval software to electronic information products.

I am encouraged by OMB's recently published response to the weight of the comments received on the "Advance Notice," and I will be submitting comments to OMB on that response. I will continue to take the position that GPO programs and services as established by law should be made part of any overall guidance provided to Federal agencies on reproduction and dissemination of Government information. I believe there is a substantial opportunity for cooperation between GPO and OMB in this public policy area that should be explored and developed.

Information Policy Act of 1989

I have reviewed H.R. 2381, the Information Policy Act of 1989, which you introduced recently. Although I agree with the intent of the bill to provide OMB with specifically defined statutory authority to promulgate guidance for Federal agencies on the information dissemination, I am concerned with various provisions of the bill.

From GPO's perspective, there are two general problems with H.R. 2381 as introduced. The first is that the bill fails to provide reference to the statutory programs and operations of the Superintendent of Documents for disseminating Federal information. The second is that it would authorize OMB to issue and, presumably, enforce the use of technical standards for information indexing, formatting, and retrieving that may or may not be compatible with GPO equipment, systems, and processes, in effect compelling GPO compliance with OMB requirements.

The law now provides that "publications for public distribution [are] to be distributed by the Public Printer" [44 U.S.C. 1701]. Current law also provides for the sale of publications to the public by the Superintendent of Documents [44 U.S.C. 1702]; sets the price of documents for sale to the public, and prescribes the terms and conditions for resale of publications [44 U.S.C. 1708]; provides for the preparation and publication of a catalog of Government documents by the Superintendent of Documents [44 U.S.C. 1710 and 1711]; and provides for the distribution by the Superintendent of Documents of U.S. Government documents to foreign libraries, under the administration of the Library of Congress [44 U.S.C. 1719]. In addition, the law establishes that Government publications of value to the public shall be distributed by the Superintendent of Documents to depository libraries [44 U.S.C. 1902].

Many of the information dissemination responsibilities currently assigned to the Public Printer and the Superintendent of Documents by statute would be undercut by H.R. 2381, in effect contravening the legislative intent of those provisions of the law which have established a centralized mechanism for the efficient, effective, and economical distribution of Government information to the public.

Several problems would flow from H.R. 2381. First, by permitting agencies to perform their own dissemination functions, the bill would create a highly decentralized patchwork of dissemination systems and operations whose consistency and efficiency would depend solely on OMB regulators. The public thus would lose the convenience and practicality of obtaining Government publications from a single, popular information resource currently available through the Superintendent of Documents.

Second, by not requiring that information products and services bound for depository libraries be disseminated to those libraries by the Superintendent of Documents, the bill would impose substantial information acquisition, cataloging, and inventory problems on depository libraries, exaggerating the problems that libraries currently face by agency (and OMB) failure to adequately address the "fugitive" document problem.

Third, the cost-effectiveness of the dissemination system proposed by the bill is doubtful, since it would permit fee waivers or reductions for generally-defined groups, unlike the current pricing system established by 44 U.S.C. 1708, which applies across the board to everyone.

Fourth, the requirement for OMB to develop a comprehensive index of Government information products and services undercuts the current responsibilities of the Superintendent of Documents in this area. It also goes against the finding of the OTA study that the responsibility for the preparation and maintenance of such an index is best assigned to GPO.

While H.R. 2381 provides explicitly for the dissemination of information to depository libraries in electronic formats, it does not otherwise appear to take notice of GPO's current authority and ability to provide for the sale of electronic formats, or for the distribution of electronic formats through other GPO programs.

I also have substantial reservations about those aspects of the bill regarding standards. The OTA study recommended that GPO take a leadership role in establishing and promoting the use of Governmentwide database standards for information reproduction and dissemination. H.R. 2381, however, would assign that responsibility to OMB. Specifically, OMB would be authorized, following "consultation" with the National Institute of Standards and Technology, GPO, other appropriate agencies, and the public, to issue "uniform technical standards for data indexing, formatting, and retrieving" information products and services disseminated via CD-ROM technology. The bill would also authorize OMB to issue standards for "magnetic tape, magnetic disk, and other electronic technologies," and to periodically revise and update these standards. While OMB is required to consult with "other agencies and the public" before issuing standards for the other electronic technologies, consultation with GPO is specifically required only for standards applying to CD-ROM.

This part of the bill would have a major impact on GPO operations, because it would provide OMB with the ability to determine GPO's future equipment, systems, and procedural requirements by mandating the standards that GPO's customer agencies will have to use. Without greater GPO participation in the standards-setting process, a system of standards could result that would require a major capital investment program by GPO, in combination with substantial workforce staffing, training, and recruitment impacts.

H.R. 2381 could be made a great deal more acceptable if it included guidance for Federal agencies to use GPO programs and services established by law, as well as provisions for greater GPO participation in the standards-setting process. I would be pleased to work with this Subcommittee to remedy these problems and develop legislation that clearly recognizes GPO responsibilities under current law.

Recommendations for Change

To summarize, the public printing and documents statutes of Title 44 have not been changed significantly since the Printing Act of 1895, so they do not reflect the changes that have occurred in electronic information technology in recent years. Where GPO's conventional printing and printing procurement functions are concerned, I think the basic framework of these statutes is sound.

Where electronic technology is concerned, I would like to see the law clarified to confirm GPO's authority to provide electronic information services to Federal agencies. Specifically, I would like to have statutory clarification of GPO's responsibility to disseminate Government information through GPO's Sales of Publications, Depository Library, International Exchange, Statutory Distribution, and Reimbursable Distribution Programs.

To do this, I think the definitions of "publication," "Government publication," "document," and "public document," as they currently occur in chapters 17 and 19 of Title 44, need to be updated to specifically include information in electronic formats. Currently, only 44 U.S.C. 1902 provides a specific definition of the term "publication" in the statute. That section could be updated to specifically include electronic products and services, and similar language could be applied to chapter 17.

To remedy the problem of "fugitive" documents in the Depository Library, International Exchange, and Cataloging and Indexing Programs, a reporting mechanism needs to be devised to alert the Superintendent of Documents to publications printed or otherwise produced elsewhere than GPO. This reporting mechanism will become increasingly necessary as more publications are converted to electronic formats by issuing agencies.

An expansion of GPO's authority to compile and maintain a comprehensive index to Government information sources and systems could be achieved by expanding GPO's current authority to implement the Cataloging and Indexing Program. GPO leadership in technology implementation and standards-setting could be implemented either under clarified GPO authority to provide electronic information products and services, or specific training and standards-setting authorizations.

On the final question of centralizing versus decentralizing GPO's operations, I suggest a dual approach for GPO's future based on a strategic scenario outlined by OTA. This approach envisions a GPO that will provide both conventional printing and non-conventional electronic information services to the entire Government within an increasingly electronic information environment. My own background in information technology persuades me that this alternative offers a practical and realistic means for resolving the information technology issues that you are considering here today.

Given the cost-effectiveness of new electronic information technologies, it is not realistic to expect that a single centralized information agency will best serve the Government's electronic information needs in the future. Instead, these technologies are more likely to give rise to multiple points of information access and dissemination not only throughout the Government, but through the competitive forces of the private sector information marketplace. Within this emerging environment, GPO will need to find new ways to lower costs and improve non-conventional electronic services to Congress, Federal agencies, and the public if it is to continue as an effective instrument of Federal information policy.

On the other hand, the Government cannot expect to achieve true cost-effectiveness through a decentralized system of conventional printing, at least in the foreseeable future. Every study of this subject that I am aware of shows that GPO's centralized conventional printing and printing procurement operations are the most cost-effective way for the Government to obtain ink-on-paper products.

What I envision, therefore, is the statutory maintenance of GPO's centralized printing, printing procurement, and documents distribution operations for the production and distribution of ink-on-paper products, and a selective expansion of those operations into non-conventional electronic technologies to improve services for our customer agencies and the public. This combination of approaches would allow the Government to address many of the public policy issues raised by electronic information technologies, while preserving the fundamental, proven character of the information management system established by current law.

Mr. Chairman, this concludes my prepared statement, and I would be pleased to answer any questions the Subcommittee may have.

Mr. **Wise**. Mr. Jenifer, your written statement discusses the Information Policy Act I introduced. This is not a hearing on that and I really do not want to get into any kind of lengthy discussion of it now but I want to say I appreciate your comments.

They are thoughtful, they are causing us to go back and look at it. You raise some good points. I want to also assure you it is not my intention to do anything that undermines GPO, the Depository Library Program or the Superintendent of Documents. It is my hope that over the next few months we can sit down and look at what we are trying to do, take in all the suggestions and address any problems that you see in it.

My basic belief in fashioning legislation is that you put it out there, let people react to it and bring everyone in to see what needs to be done to accomplish the goals. I want to assure you we want to work closely to meet your legislative needs as well as others.

Mr. **Jenifer**. I appreciate those comments. We look forward to sitting down with you and talking about the issue.

Mr. **Wise**. The Depository Library Program has been operated by GPO without any charge to participating libraries. Can electronic information products be offered to libraries without cost sharing and do you see any distinctions between providing CD-ROM disks and online services?

Mr. **Jenifer**. I guess the answer is yes and no. I see an increase in costs in some circumstances and in some I do not see an increase in costs. The depository libraries now themselves undertake additional costs. It has been estimated that they spend at least 10 times the value of the products they receive to administer the program itself.

I believe that the policies that are in place now, with GPO administering the program, could continue. I see our being able to expand into other areas, particularly the areas of CD-ROM dissemination, which can be done in a cost effective manner.

Mr. **Wise**. Do you see a role for GPO in setting information policy or do you see GPO as providing dissemination services for whatever information the executive branch and the Congress decide to publish?

Mr. **Jenifer**. I do see us being able to participate in the information policy process. I think that by being here today, we are participating in the information dissemination policy. I have testified through the appropriations process, given speeches to organizations around the country, and so on, which I view as participating in the policy process.

I think our track record has been successful throughout the years in the dissemination of information, and that adds more emphasis to the point that we do have a valid role and people are willing to listen to us for that particular reason.

Again, I think we are participating in the policymaking process. We welcome the opportunity to participate in any other ways that we would be asked.

Mr. **Wise**. At the same time, I would assume that continuing providing dissemination services for whatever information the executive branch or the Congress decides to publish, correct?

Mr. **Jenifer**. We are willing to do just that. We function under the basic philosophy that you never know what authority you have until you exceed it.

Somebody will come back and say you are stepping out of line, GPO.

Mr. **Wise**. I like that philosophy. I wish I had you in a meeting with the Army Corps of Engineers last Friday when all I heard was that they were not authorized to do something. I kept saying, can you show me where you are forbidden to do it? They said no but if it doesn't say we can, we can't.

Would GPO be more interested in having a role in dissemination of products like tapes, disks, CD-ROM rather than online service?

Mr. **Jenifer**. Yes, sir. I have second thoughts as to whether GPO should be the disseminator of data bases. I believe our responsibility is in the area of publications. That is something that is produced and is published and distributed to the public itself.

That is where I feel the law strengthens our position, and we have a responsibility to perform in that area.

Mr. **Wise**. Thank you.

Mr. McCandless.

Mr. **McCandless**. Mr. Jenifer you were in the audience I believe during the previous panel.

Mr. **Jenifer**. For a portion of the time I was, yes.

Mr. **McCandless**. I don't know if you were able to grasp the dialog and questions of Mr. Massa. Would you have any comments about his position relative to this report and what he considers to be the overall inclusion of the private sector and its responsibility?

Mr. **Jenifer**. I am on record as supporting the OTA report. My support of it is that it enforces, after considerable research, the role of GPO.

Again, I believe we have a proven track record. We have a centralized information dissemination process that works, and this is the reason I personally support the report.

I do not see where the report excludes the private sector from being involved. I noticed Mr. Massa had a CD-ROM in front of him. I see GPO serving as a focal point for products of that nature, just as we are the focal point for the production and dissemination of microfiche. We administer these things, and the private sector is involved. These products are produced through the private sector. We go to the private sector to procure CD-ROM's.

With reference to microfiche, we go to the private sector to procure these. We act as a contracting officer. So the private sector is fully involved in the majority of these functions.

I would like to elaborate on something that is historical that shows how GPO can be involved, and has evolved, with these products. There was a product called the Master Cross-Reference List the MCRL, as we refer to it. It originally was a job that was produced on the GPO's photocomposition system. As a matter of fact, part of the justification for that system was to produce the MCRL.

Well, there came a time where it was impractical to run that job, so it was run off a COM system and we produced microfiche and ultimately that was the media that that job ran in. GPO served as the procurement agent for the Army. It worked perfectly. Right now the product is evolving further, and it is evolving into a CD-ROM product. GPO has been selected as the contractor and the procurer of the product for the Army. Again, it has worked perfectly. We have evolved from the actual producer of the paper product to the procurer of the multimedia products that have followed. It has worked well, and the private sector has been fully involved, so I do not see the private sector being eliminated from the process at all.

Mr. **McCandless**. A little technical nature, but having had a recent experience by looking at electronic equipment and the disks, the new aluminum disk that traverses the cassette, the salesman was very good, he said, you know the cassette loses its quality over a period of time, and this is a new disk now, it is made of metal, and it will be there forever, and the quality will retain itself.

Obviously, this man is trying to sell me something. But he was also trying to make a point. When we talk about magnetic tapes, aren't we talking about something that does lose its capability over a period of time versus this new technology of a CD-ROM?

Mr. **Jenifer**. The archival ability of a CD-ROM hasn't been proven to date. I could not attest to the actual life. I think it is a much more reliable media than magnetic tape. Will it last as long or in a better condition than microfiche? I could not basically attest to that. I will say this, it is something we have our quality and test control people looking at right now to give us some basic answers from a Government standpoint.

Mr. **McCandless**. In a demonstration we had, and I can't give you the amount, but there was some fantastic amount of information that could be placed on one side of one of these CD-ROM's by comparison to any other type of data retaining electronic system. Storage space then would be an attraction here with respect to what you could do with CD-ROM's versus other types of things.

Have you gotten involved in that at all?

Mr. **Jenifer**. Oh, yes, sir. The storage capacity is just fantastic. I couldn't attest to the exact amount of data. Grant might have that as to how much data could be stored on it. But I think the access of data, the ease of access of the data is also a major consideration.

As to the use of this particular type material—we have just said we can put the entire bound record on one CD, and that would consist of 30 volumes, just to give you an idea of what could be put on a compact disk, so it does have quite a storage capacity. And the ease of access is a big advantage.

Mr. **McCandless**. As you know, Washington, DC, is only a certain size, and as the years progress, we are going to run out of buildings to store things in. I don't know that Maryland or Virginia is going to be interested in——

Mr. **Jenifer**. I think that electronic media is going to add tremendously to our ability to store material, and it has done so far.

Mr. **McCandless**. Thank you, Mr. Chairman.

Mr. **Wise**. Getting a new rig?

Mr. **McCandless**. He didn't sell me.

Mr. **Wise**. I want to thank you very much, Mr. Jenifer, for appearing and also for your extensive written testimony. I know we are going to be talking a lot more, and look forward to it.

At this time, this concludes this hearing.

Mr. **Jenifer**. Thank you, Mr. Chairman.

[Whereupon, at 12:05 p.m., the subcommittee adjourned, to reconvene subject to the call of the Chair.]

APPENDIXES

APPENDIX 1.—AGENCIES RESPONSES TO SUBCOMMITTEE QUESTIONS

RESPONSE TO QUESTIONS FOR JOHN J. FRANKE, JR.
ASSISTANT SECRETARY FOR ADMINISTRATION
DEPARTMENT OF AGRICULTURE

1. Have any depository libraries contacted the Department to inquire about the possible availability of EDI data? Has the Department initiated any contact with depository libraries regarding access to EDI?

When the EDI system was first announced in 1985, the National Agricultural Library received a few questions about access by libraries. Since then, we have neither received further inquiries from any depository library nor initiated contact with them about access to EDI data or the EDI service. As I mentioned in my prepared remarks, under the recompetition of EDI which will be concluded before our current contract ends on October 1, 1989, we are allowing land-grant and depository libraries to access EDI as cooperators. Under this provision, they will pay no monthly minimum and will pay the same rates as we in the Department will pay for use of the computer-based communications service.

It remains to be seen whether libraries are interested in the type of perishable data that is disseminated through the EDI system. We will contact them directly to inform them of the opportunity to become official users of the service as soon as the recompetition procurement is completed. We are looking at alternatives for handling the billing for cooperators who have minimal requirement to access the service. For many the cost to bill could be higher than the actual usage charges.

2. Will archival copies of EDI data be maintained permanently in electronic format such as CD-ROM? If so, please describe the plans in more detail. If not, please explain the plans for disposal of non-current EDI filings. If a records disposal schedule for EDI data has been approved by the Archivist, please provide a copy.

Before I respond to the specifics of your question, I think an explanation of what EDI actually is would be helpful. EDI is a dissemination service only. USDA agencies do not collect data or receive "filings" specifically for EDI. Most of the reports distributed through EDI are collected for agency program use and distributed through various means, the most common still being hardcopy. In most cases, EDI reports are an electronic version of traditional hardcopy reports.

We have no current plans to place archival copies of all of the EDI reports on an electronic format such as CD-ROM. For much of the data there is no interest in such access. Our plan is to identify those data sets that are of sufficient interest to justify the production of archival datasets.

Agencies each have established records disposal schedules for all of their data and are responsible for maintaining the record copy of all data disseminated through EDI, in a manner that is independent of EDI. A copy of the records disposal schedule for the National Agricultural Statistics Service is enclosed. Similar schedules are available for all of the agencies.

3. How difficult would it be to prepare and distribute CD-ROM disks containing EDI data at fixed intervals?

Preparing the CD-ROM disks of EDI data at fixed intervals would not be difficult at all. The real cost and difficulty is in reformatting the data to present it in useful time-series format. To better explain what I mean, let me use as an example, the Agricultural Prices and also the Crop Production reports of the National Agricultural Statistics Service (NASS). These are monthly reports containing extensive text and tables. The major interest is in immediate use of the information when released. Those who want to do analyses of the data to determine trends or compare with previous months or years are interested only in the tables and would like to use software such as spreadsheets to analyze the data. Because of the format of current reports and the variation in data presented, caused by such factors as changing crops, considerable work would be required by NASS before the data could be provided in a more usable format to then be manipulated with the desired software tools. This is the area we expect to address, as mentioned in my testimony.

4. Would the prospect of providing EDI data to depository libraries be simpler if the Department were not under an obligation to provide online access to time sensitive information?

There is no direct relationship between our obligation to provide online access to time sensitive information and our ability to provide EDI data to depository libraries. In fact, the libraries currently receive all EDI reports that are available in hardcopy. Elimination of online access to others would not help the libraries.

5. You testified that the Department pays the cost of loading EDI data into the system and a share of the overhead costs associated with providing the service. Please provide a more detailed description of the type of cost paid by the Department.

The costs paid by the Department fall into two general categories: those that reflect specific agency usage and those that are charges for general system overhead. The following are examples of the types of charges paid by the Department:

a. Specific agency usage charges
   . Data communications and computer resources for accessing reports
   . Data communications and computer resources for loading reports
   . Data communications used when modifying profiles of reports on the system

b. General overhead charges
   . Computer resources for nightly maintenance of database
   . Disk storage of database, programs, and application files
   . Computer resources used by special operating software (CICS) and application program using resources when system is up, but inactive
   . Magnetic tape backups
   . Software surcharge for report creation

6. Are terminals for free public or press use of EDI data provided by the Department? If not, why not? Would the Department be willing to provide free public terminals in other government facilities if there is adequate demand?

The Department does not provide any free terminals for public or press use of EDI data. One of the key factors that attract public subscribers to the EDI service is the opportunity it offers them to receive the reports in machine readable format directly into their own computers. This allows them to immediately manipulate or reformat the reports according to their own needs and further disseminate them through whatever communications technology they use. For some, it is a form of bulletin board; others use satellite, FM-sideband, or other methods. They don't want to have to rekey hardcopy reports because of the labor involved, the potential for making mistakes, and the lost time when dealing with time-sensitive and perishable data.

We provide for other government agencies to access EDI as cooperators under our contract which allows them to use the service, paying at the same rate that we do in the Department for the computer time-sharing services used, without paying a monthly minimum. Many states and other federal agencies are participating in this way.

7. How does the Department respond to requests for waiver of applicable EDI fees from deserving members of the public or the press?

We have never received any requests for waiver of EDI fees. When we receive calls from members of the public who clearly are interested in accessing very few reports carried by EDI, we provide them with a list of companies that do subscribe to EDI and further disseminate the data. Their charges tend to be lower because their service is not keyed to absolute guarantee of equal access and they tend to be more oriented toward the needs of the ultimate small end user. These companies also offer other types of end user services that make them attractive to differing marketplaces.

8. How has OMB Circular A-130 affected the design or operation of the EDI database? Please describe any actions that have been taken because of Circular A-130 that would not have been taken.

The EDI system was designed before Circular A-130 addressed the issues of public information dissemination. The approach we took of reliance on the private sector to both provide the service for us and to further disseminate the data through various means to the ultimate end users was consistent with our philosophy at the time and with that of OMB in conversation with them and in the subsequent updates to Circular A-130. Some factions in OMB wanted us to charge a market value price for the data as well as for the service. The Department made the decision that it would not be appropriate to charge for the data itself in light of our responsibilities and the importance of this data in fostering a healthy national agricultural industry and promoting a strong export program. We need to encourage as wide access to the information as possible.

9. The SEC Authorization Act of 1987 requires that EDGAR information may be used or resold without restriction and without payment of royalties. Would the application of this requirement to the EDI database require any changes in design or operation?

There would be no change required because we currently encourage EDI subscribers to further distribute the data and place no restrictions or royalty fees on them.

10. The SEC Authorization Act of 1987 requires that EDGAR users must be able to obtain information by direct interconnection with the EDGAR system. Would the application of this requirement to the EDI database require any changes in design or operation?

No change would be required to EDI because it functions that way now. The thrust of EDI was to provide a single source for USDA time-sensitive and perishable data for access by the public. This provides the public subscribers with the option of acquiring the USDA report's directly from EDI or obtaining them from any of the information retailers (multipliers).

REQUEST FOR RECORDS D[illegible]POSITION AUTHORITY
(See instructio[illegible] on reverse)

TO: GENERAL SERVICES ADMINISTRATION
NATIONAL ARCHIVES AND RECORDS SERVICE, WASHINGTON, DC 20408

LEAVE BLANK
JOB NO. N1-355-86-1
DATE RECEIVED 7-21-86

1. FROM (Agency or establishment)
U. S. Department of Agriculture

2. MAJOR SUBDIVISION
National Agricultural Statistics Service

3. MINOR SUBDIVISION

4. NAME OF PERSON WITH WHOM TO CONFER
Sharon Flynn

5. TELEPHONE EXT.
447-4612

NOTIFICATION TO AGENCY

In accordance with the provisions of 44 U.S.C. 3303a the disposal request, including amendments, is approved except for items that may be marked "disposition not approved" or "withdrawn" in column 10. If no records are proposed for disposal, the signature of the Archivist is not required.

DATE 9-28-87

ARCHIVIST OF THE UNITED STATES
Frank G. Burke

6. CERTIFICATE OF AGENCY REPRESENTATIVE

I hereby certify that I am authorized to act for this agency in matters pertaining to the disposal of the agency's records; that the records proposed for disposal in this Request of 48 page(s) are not now needed for the business of this agency or will not be needed after the retention periods specified; and that written concurrence from the General Accounting Office, if required under the provisions of Title 8 of the GAO Manual for Guidance of Federal Agencies, is attached.

A. GAO concurrence: ☐ is attached; or ☒ is unnecessary.

B. DATE
3-23-87

C. SIGNATURE OF AGENCY REPRESENTATIVE
Laura B. Snow
Laura B. Snow

D. TITLE
Chief, Management Analysis Branch

7. ITEM NO.	8. DESCRIPTION OF ITEM (With Inclusive Dates or Retention Periods)	9. GRS OR SUPERSEDED JOB CITATION	10. ACTION TAKEN (NARS USE ONLY)
	NATIONAL AGRICULTURAL STATISTICS SERVICE (NASS) ADMINISTRATIVE RECORDS ASSOCIATIONS, BOARDS, COMMITTEES, COUNCILS, AND CONFERENCES (Arranged alphabetically by name and title.)		
1.	a. Internal Agency Board, Committee, Council, and Conference Records received, processed, and created by internal agency activities and maintained by the sponsor. Records may include but are not limited to: Agency administrative-management projects and improvement recommendations, advisory committees, research project proposals, program operation and procedure improvement recommendations, agendas, minutes, final reports, decisions, and related records documenting accomplishments. Permanent. Break files annually. Transfer to FRC 3 years after final decision or action is completed. Transfer to the National Archives in 5-year blocks when the most recent records are 15 years old (e.g., transfer 1980-84 records in 1999). b. All other committee-conference records and copies. Break files annually. Destroy when 3 years old or no longer needed for reference, whichever is sooner.		132 items

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REQUEST FOR AUTHORITY TO DISPOSE OF RECORDS—Continuation Sheet

7. ITEM NO.	8. DESCRIPTION OF ITEM (WITH INCLUSIVE DATES OR RETENTION PERIODS)	9. SAMPLE OR JOB NO.	10. ACTION TAKEN
	DIRECTIVES		
2.	NASS Directives. (Arrange by file code, then alphabetically by title in assigned number order.) a. Single copy record files of each new and revised internal directive detailing NASS policy and procedure. Includes: Crop, Livestock, and Prices Estimates Manuals, Crop Estimating and Operations Memoranda, and Operating Procedures Handbooks with incorporated forms. Permanent. Offer to NARA in 5-year blocks when 20 years old (e.g., offer 1980-84 block in 2005). b. Related case files which document important aspects of the development of the document. Destroy 5 years after directive is canceled, superseded, or becomes obsolete. c. All other copies. Destroy when canceled, superseded, obsolete, or no longer needed for reference.	NC1-354-78-1 Item 2	
	NASS FORMS		
	(Arrange master form record files by file code, then alphabetically by title or sequentially by form number, separated into current and obsolete groups.) One master record copy of each form created and issued for use by NASS Headquarters and the State Statistical Offices (SSO's) will be kept. Related instructions and documentation showing inception, purpose, and scope will be kept with the form record copy.		
3.	Federal Surveys. Survey questionnaires created and issued by NASS Headquarters and SSO's for the purpose of collecting, tabulating, and editing data relating to the national agricultural economy. Federal surveys are conducted on subjects of wide national interest and concern.	NC1-354-78-1 Item 3	

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	a. One master copy of each Federal survey questionnaire approved by OMB, work sheets, and summary sheets will be kept by the Headquarters as the record copy. Break files when a form is superseded, canceled, or discontinued. Destroy when no longer needed for administrative use. b. One copy of each Federal survey questionnaire kept by the surveying SSO's. This includes those adapted using alternative entries to the NASS Form approved by OMB. Destroy with SSO survey summary files for the applicable survey when 7 years old. The survey comments and recommendations must be destroyed along with the survey data summaries to which they apply. c. All other copies. Destroy as instructed by the Statistician-in-Charge or Branch Chief when form is superseded, canceled, or discontinued, or when no longer needed for reference correlation with collected survey data.		
4.	State Government Surveys. Survey questionnaires created and used by SSO's for the purpose of collecting, tabulating, and editing statistical and inferential data relating to the agricultural economy of a State. State surveys are conducted by and for the Government of that State. a. One master record file copy of each State survey questionnaire including work sheets and summary sheets will be kept by the surveying SSO. Dispose according to the governing regulations of the State. If no State regulations exist, forms files may be destroyed with the summary records of the applicable survey when 7 years old. The survey comments and recommendations must be destroyed along with the survey data summaries to which they apply. b. All other copies.	NC1-354-78-1 Item 4	

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	Destroy as instructed by the Statistician-in-Charge or Branch Chief when form is superseded, canceled, or discontinued, or when no longer needed for reference correlation with collected survey data.		
5.	Other NASS Forms. Administrative and other management forms created by NASS and issued to Headquarters and SSO's for internal preparation and use. a. Single master record copy files kept by NASS Headquarters. Destroy 5 years after related form is discontinued, superseded, or cancelled. b. All other copies. Destroy as instructed by NASS when form is canceled or superseded, or when no longer needed for reference.	NC1-354-78-1 Item 5	
	ORGANIZATION-MANAGEMENT		
6.	Authority Delegations. (Arrange by file code.) a. Copies of Departmental documents delegating authority to the agency and/or specific positions to perform assigned functions and/or specific actions. Includes original copies of authority delegations issued by agency officials to identified positions. Destroy 3 years after delegation is superseded or obsolete. b. Original copies of temporary or limited authority delegations issued by agency officials to individuals by name. Destroy when superseded or obsolete.	NC1-354-78-1 Item 6	
7.	Legal Decisions/Opinions. (Arrange by file code.) Agency copies of USDA Office of the General Counsel	NC1-354-78-1 Item 8	

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7. ITEM NO.	8. DESCRIPTION OF ITEM (WITH INCLUSIVE DATES OR RETENTION PERIODS)	9. SAMPLE OR JOB NO.	10. ACTION TAKEN
	(OGC) opinions and comments on General Accounting Office (GAO) and Comptroller General decisions or instructions, legislation, and court decisions affecting NASS. Destroy as instructed by the Statistician-in-Charge or Branch Chief when no longer needed for reference.		
8.	Consultant Opinions. (Arrange by file code.) Copies of correspondence, reports, and supporting analysis originated by NASS experts consulted by other agencies or proposed statistical research projects, data surveys, or methodology. Break files annually. Destroy when 2 years old.	NC1-354-78-1 Item 9	
9.	Management Programs. (Arrange by file code, then alphabetically by title or subject.) a. Records of internal NASS management improvement of program systems and procedures. Includes study and survey reports and recommendations. Also includes project statements, final reports, analyses of test performance, and correspondence pertaining to research in statistical data collection, processing, or reporting systems. Permanent. Break files at end of year in which recommended actions are superseded or become obsolete. Transfer to FRC when 5 years old. Transfer to the National Archives in 5-year blocks when the most recent records are 15 years old (e.g., transfer 1980-84 block in 1999). b. Records of internal NASS management improvement of administrative systems and procedures. Includes study reports and recommendations. Also includes project statements, final reports, analyses of test performance, and correspondence. Break files at end of year in which project or other	NC1-354-78-1 Item 10	

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	recommended action is completed. Destroy when 3 years old or no longer need for reference, whichever is sooner. b. All other NASS copies of approved management improvement records, and canceled or disapproved recommendations and projects. Also includes interim project progress reports, correspondence concerning status of (or minor changes in) established objectives, or other routine documents of limited retrieval value. Break files at end of year in which project or other recommended action is completed, canceled, or disapproved. Destroy when 3 years old or no longer need for reference, whichever is sooner. c. Documentation of NASS participation in Departmental management programs. Includes initial reports and project proposal statements, amendments, final reports, and related non-routine correspondence. Break files at end of year in which proposed action is completed. Transfer to FRC when 2 years old. Destroy when 5 years old.		
10.	Management Controls. (Arrange by file code, then alphabetically by title or subject.) a. Records of externally performed comprehensive inspections, audits, and surveys of NASS operations by NARA, GAO, or other Federal agencies. Includes initial reports, agency final reports of corrective actions taken, and related pertinent correspondence. Break files at end of year in which final necessary action is completed. Destroy when 10 years old. b. Records of internal and/or limited audits, inspections, and special reviews of agency operations by NASS or other USDA agencies. Includes	NC1-354-78-1 Item 11	

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	initial report, final report of corrective actions taken, and related pertinent correspondence.		
	Break files at end of year in which final necessary corrective action is completed. Transfer to FRC when 2 years old. Destroy when 5 years old.		
	c. Routine correspondence, feeder reports, and similar documents of a related but routine nature.		
	Break files annually. Destroy when 2 years old.		
11.	External Relations. (Arrange by file code, then alphabetically by title or subject.)	NC1-354-78-1 Item 12	
	a. Record copies of National Association of State Departments of Agriculture (NASDA) cooperative agreements, interagency cooperative agreements, research agreements, Memoranda of Understanding with State Government agencies or university systems, and formal approval of extension(s)/amendments that significantly affect agency program functions. Also includes non-routine related correspondence.		
	Permanent. Break files at end of year in which agreement or understanding is superseded or becomes obsolete. Transfer to FRC when 3 years old. Transfer to the National Archives in 5-year blocks when the most recent records are 15 years old (e.g., transfer 1980-84 block in 1999).		
	b. Records of agency response to Congress concerning legislation and requests for information. Records of routine interaction and cooperation with other Federal, State and local government agencies, educational institutions, and private organizations. Also includes agency requests for Federal Register publication of regulatory, functional, or policy information. Includes correspondence and reports.		
	Break files annually. Destroy when 3 years old.		

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12.	Emergency Preparedness. (Arrange by file code.) Records of NASS participation in the Departmental program. Includes Departmental instructions, correspondence, and reports relating to compliance and related actions. Destroy when superseded, obsolete, or no longer needed for reference.	NC1-354-78-1 Item 13	
	INFORMATION/PUBLICITY		
13.	Official Speeches. (Arrange by file code, then alphabetically by subject.) a. Single record copies of prepared scripts of official speeches presented to a public audience by the NASS Administrator or his Deputies concerning agency policies and programs. Includes speech scripts, indexes, and a clear copy of charts and other visual aids which the agency or USDA has not published. Permanent. Break files annually. Transfer to FRC when 5 years old. Transfer to the National Archives in 5-year blocks when the most recent records are 15 years old (e.g., transfer 1980-84 block in 1999). b. Single record copies of prepared scripts of official speeches and lectures presented by Division Directors and other NASS officials, such as section heads, assistant Statisticians-in-Charge, and research personnel, to the public, or to Federal, State, or local government groups. These speeches and lectures are presented to inform the audience of established agency policies and programs. Includes scripts, charts, and other visual aids which may or may not have been published by NASS or USDA. Break files annually. Destroy when 3 years old.	NC1-354-78-1 Item 14	
14.	Published Article Manuscripts. (Arrange by file	NC1-354-78-1 Item 15	

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	code, then alphabetically by subject or title.) Camera or final draft copies of articles written by agency officials and officially approved for publication by another agency, USDA, or public media. Break files at end of year in which publication is issued. Destroy when published text is verified, when no longer needed for reference, or when 3 years old, whichever is sooner.		
15.	Survey Data Reporter Awards. (Arrange by file code.) SSO records of recognition awards presented to private citizens who voluntarily contribute statistical survey data regularly for a number of years. Includes correspondence, award notices, and copies of newspaper articles if award is presented publicly. Break files annually at end of year award is issued. Destroy when 3 years old or when no longer needed for reference, whichever is sooner.	NC1-354-78-1 Item 16	
16.	Headquarters Publications and Periodical Releases. (Arrange by file code, then alphabetically by title in issue date order.)	NC1-354 78-1 Item 17	
Includes ASB releases	a. Single record copies of NASS-prepared and -issued brochures, booklets, bulletins, circulars, periodicals, research projects, summary statistical survey data, and special study reports. NOTE: Record copies of publications issued through the USDA, Office of Governmental and Public Affairs (OGPA), are maintained by OGPA. Permanent. Break files annually at end of year of issue. Transfer to FRC in annual segments when 3 years old or when volume warrants. Transfer to the National Archives in 5-year blocks when the most recent records are 15 years old (e.g., transfer 1980-84 block in 1999).		

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	b. Single record copies of NASS Headquarters-prepared and -issued interim statistical survey data reports. Interim reports contain statistical data for a specific and limited survey period which are later summarized and published for an extended time period such as annually. Interim reports are issued on cold storage, fertilizers, various crop estimates, livestock reports, and other commodities and subjects such as prices and labor. * ~~Includes publications printed by GPO.~~ *per telcon w/ Sharon Flynn, ENS, 4/10/87 Break files annually at end of year of issue. Transfer to FRC in annual segments when 3 years old or when volume warrants. Destroy when 7 years old or when final census review is satisfactorily completed, whichever is sooner, as determined by the Statistician-in-Charge or Branch Chief.		
17.	SSO Publications and Procedure Releases. a. Single record copies of SSO-prepared and -published data summary reports of Federally-sponsored statistical surveys. These reports reflect national data when available, as well as comparative data for the region or State the SSO serves. Summary reports are issued at the end of a survey period or upon completion of surveys (annually or less frequently, including one-time surveys). Includes special SSO studies and reports requiring considerable time and effort to prepare. Permanent. Break files at end of year of issue. Transfer to FRC in annual segments when 3 years old or when volume warrants. Transfer to the National Archives in 5-year blocks when the most recent records are 15 years old (e.g., transfer 1980-84 block in 1999). b. Single record copies of SSO-prepared and -published interim statistical data reports of statistical surveys. These reports are issued periodically throughout a survey period and reflect	NC1-354-78-1 Item 18	

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7. ITEM NO.	8. DESCRIPTION OF ITEM (WITH INCLUSIVE DATES OR RETENTION PERIODS)	9. SAMPLE OR JOB NO.	10. ACTION TAKEN
	data as of a certain date for a specified period of time. They reflect data for the region or State the SSO serves and may contain comparative national statistics. Reports may also contain comments on significant local factors such as weather affecting forecasts. Break files annually at end of year of issue. Transfer to FRC when 3 years old or when volume warrants. Destroy when 7 years old. c. Single record copies of SSO-prepared and -published data summary reports of State Government sponsored statistical surveys. Also, SSO releases containing general information, such as newsletters. NOTE: Record copies of information releases prepared by an SSO and issued by another State Government agency are not covered by this schedule. Break files annually at end of year of issue. Dispose according to State Government regulations. If no such regulations exist, dispose according to the schedule for summary data reports for Federally sponsored surveys. (Item 17.a. above.)		
18.	Publication Editorial Policy. (Arrange by file code, then alphabetically by title.) Records documenting officially approved purpose, policy, format, and production standards of each agency or SSO publication issued. Also includes approved changes and reasons for, and approval of, merging or canceling. a. NASS Official Issuances. Break files at end of year publication is canceled or superseded. Destroy 5 years after publication is obsolete or superseded. b. State Government Issuances.	NC1-354-78-1 Item 19	

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	Break files at end of year publication is canceled or superseded. Dispose according to State Government regulations. If no regulation exists, the Federal schedule for agency issuances applies. (Item 18.a. above.)		
19.	Publication Development. (Arrange by file code, alphabetically by title and issue date.) Records of development for an individual issue. Includes correspondence, reports, agency approval for publication, printing instructions, and subsequent comments or suggestions received. Break files at end of year of issue. Destroy when 1 year old.	NC1-354-78-1 Item 20	
20.	Historical Narrative. (Arrange by file code, then alphabetically by subject and year(s).) Narrative historical accounts describing the agency, its structure, policy, and/or programs. May also cover some aspects of these, or the manner in which functions were performed. Break files at end of year in which account was published or otherwise issued. OGPA has the record copy for all Departmental publications. Destroy when no longer needed for reference.	NC1-354-78-1 Item 21	
21.	Historical Collections. (Arrange by file code, alphabetically by subject, then by year of origin or accumulation.) Special collections of information in printed, microfiche, or machine-readable form. Includes manual and machine-readable records of survey estimates and indications, as well as statisticians' collections of nonrecord published survey data on specific commodities by locale for extended time periods. Also, may include correspondence, charts, instructions, photos, maps, and unique collections of documents relating to agency functional performance. a. NASS Headquarters and SSO collections relating to headquarters-directed programs.	NC1-354-78-1 Item 22	

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	Destroy when no longer needed for reference. Transfer to FRC is not authorized. b. SSO collections relating to State Government-directed programs. Destroy when no longer needed for reference. Transfer to FRC is not authorized.		
22.	Library Management. (Arrange by file code, then alphabetically by subject.) Records of the establishment, collection, and maintenance of centrally located collections of technical reference books, articles, and reports pertinent to specific functional needs. Includes correspondence, reports, and instructions. Break files annually. Destroy when 3 years old or when library is discontinued and collection is broken up and transferred or destroyed.	NC1-354-78-1 Item 23	
	SYSTEMS AND PROGRAM OPERATIONS, PLANNING, AND DEVELOPMENT		
23.	ADP Systems Planning/Development. (Arrange by file code, then alphabetically by subject.) a. Records of reports and recommendations made concerning conversion from manual to automated systems and revising or expanding existing automated systems for NASS headquarters and/or SSO's. Includes documents on system scope, projected costs, equipments needs and recommendations, and methods of collecting, processing, issuing, storing, and retrieving data. Also includes records relating to system design, evaluation, implementation, and agency approval of new or revised systems. Permanent. Break files at end of year in which recommended system is approved, installed and operating, replaced, or discontinued. Transfer to	NC1-354-78-1 Item 24	

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	FRC when 3 years old. Transfer to the National Archives in 5-year blocks when the most recent records are 15 years old (e.g., transfer 1980-84 block in 1999). b. Routine reports, correspondence, background material, and miscellaneous documents relating to recommendations on new or revised automated systems. Includes routine record materials relating to implementation and day-to-day systems operations. Break files annually. Destroy when 3 years old.		
24.	NASS Research Project Planning/Development/Performance. (Arrange by file code, then alphabetically by project title and/or by cooperative group, institution, or agency.) a. Records of proposed project statements, approval clearances, design, development progress reports, and final project reports. Relates to research projects conducted to find new or better ways of collecting, processing, and reporting statistical data. Records of cooperative projects also include copies of signed cooperative agreement. Break files at end of year in which project is officially completed or discontinued. Transfer to FRC when 3 years old and destroy when 10 years old. b. Records of routine project progress including correspondence, reports, documents, and machine-readable media collected and produced for tests and analysis. Also includes copies of periodic payment authorization to cooperators and/or receipt notices. Break files annually. Destroy 1 year after project is closed or when of no further retrieval value. c. Records of disapproved proposed projects including background material, correspondence, reports, proposed project statement, and disapproval.	NC1-354-78-1 Item 25	

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	Break files annually. Destroy 3 years after disapproval or when no longer needed for reference, whichever is sooner.		
25.	Proposed NASS Survey Program Development. (Arrange case files by file code, then alphabetically by subject.) Collections of background material on proposed, new, or major modifications of existing statistical survey programs pertaining to the agricultural economy or commodities. Requests for new or modified surveys come from sundry public and private sources including Congress, private interest groups, and communications media. New surveys or additions and modifications must be cost-justified and be important to a significant proportion of the population before submission of formal applications which include public reporting requirements and estimated costs, data collection processing and reporting procedures, estimated costs, justification, and agency approval/disapproval.	NC1-354-78-1 Item 26	
	a. Approved New Surveys or Survey Modifications. Permanent. Break files at end of year approval for implementation is granted. Transfer to FRC when 5 years old. Offer to the National Archives when approved survey is discontinued.		
	b. Disapproved New Surveys or Survey Modifications. Break files at the end of the year proposal is disapproved. Transfer to FRC when 3 years old or no longer needed for reference or resubmission, whichever is sooner. Destroy when 15 years old.		
	c. New Surveys or Survey Modifications Not Acceptable for Submission. Break files at end of year decision of unacceptability is reached. Transfer to FRC when 5 years old. Destroy when 15 years old.		

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	PRE-SURVEY RECORDS		
26.	List Frame. Records consist of lists of individuals, businesses, or other entities which are used to provide a sampling frame for NASS surveys.		
	a. Master List for each SSO. Records consist of a listing of individuals, businesses, or other entities that are constantly updated by the SSO in charge of the list. Records are maintained on magnetic tape or disk at a centralized location.		
	Primarily a working file; however, a back-up file is maintained and should be destroyed when superseded or obsolete.		
	b. Changes and deletions to the Master List. Records consist of all changes and deletions to the Master List. Records are maintained on magnetic tape or disk at a centralized location.		
	Break files annually. Destroy when 1 year old.		
	c. Microfiche, computer printouts, or other machine-readable records of the Master List.		
	Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
27.	Approved Survey Design. (Arrange by file code, then alphabetically by survey title and/or commodity.) Survey specifications, guidance for data collection, editing and processing, glossary of terms, sample forms, and information collected into handbooks for major surveys. These handbooks are based on directives procedures and are used to train survey and other SSO personnel.	NC1-354-78-1 Item 27	
	a. Master File Record Copy.		
	Break files annually. Destroy 5 years after satisfactory survey completion. Forms and other		

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	component record items are filed and disposed separately. (See Items 2 and 3 of this schedule.)		
	b. All other handbook copies.		
	Destroy following survey completion or when no longer needed for reference.		
28.	Area Frame Sample Selection. (Arrange by file code, then alphabetically by geographical area and year data were applied or collected.) Correspondence, manual or machine listings, and frame operating documents relating sample selection with a specific survey. Used to identify land area by usage for agriculture or other purposes. Also used for stratification, apportionment, and selection and rotation of land areas used for probability sample surveys to estimate agricultural production. The selected sample survey frame is rotated and replaced at a rate of 20% of the sample land area per year. Destroy when no longer needed for administrative use.	NC1-354-78-1 Item 28	
	OMB CLEARANCE REQUESTS		
29.	Requests. (Arrange case files by docket number in sequence.) Records of requests for OMB clearance approval and OMB decision for issuance of regulations, instructions, and forms placing a recordkeeping/reporting burden on the public. OMB clearances are also needed for new or revised statistical survey programs, research projects, and studies which require data to be obtained from the public. Records include the request transmittal form, supporting documents detailing purpose, justification, estimated costs, public recordkeeping and reporting required, and attached regulations, forms, etc. Break file at end of year in which OMB clearance expires, is cancelled, discontinued, or becomes obsolete. Destroy when 7 years old.	NC1-354-78-1 Item 29	

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30.	Index. (Arrange by docket number in sequence.) Index card records of case file requests for clearance request retrieval. Destroy along with case file.	NC1-354-78-1 Item 30	
31.	Correspondence. (Arrange by file code, then numerically by docket number.) Routine correspondence records concerning OMB clearance processing, approval requirements, and status of clearance requests. Break files annually. Destroy when 2 years old.	NC1-354-78-1 Item 31	

APPROVED NASS SURVEY PROGRAMS
OPERATING RECORDS FOR NATIONAL SURVEYS

NASS surveys provide primary sample source data about specific areas of the nation's agricultural economy. Sample survey data are edited, comparatively analyzed, processed, and summarized. The individuals and businesses surveyed voluntarily provide information about their operations. Processed primary data plus observation, comments, and other factors such as weather are statistically improved to produce estimates and forecasts. These relate to land use, production volume, production cost versus price received, commodity stocks, distribution, losses, prices received, farm labor, and other economic factors. Surveys are conducted by:

a. Mailing out questionnaires,

b. Personal and telephone interviews, and

c. Computer-assisted telephone interviews.

Special surveys may be made only once but most surveys are periodic. The following describe briefly a few of the major types of surveys made.

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a. The Objective Yield Survey involves personal interviews of farm operators, plus monthly observations, plant and related measurements of randomly selected sample plots. This survey primarily includes corn, cotton, grain, sorghum, potatoes, rice, soybeans, sunflowers, and wheat. Other crops covered in individual States include: Michigan - tart cherries; California - grapes, peaches, almonds, lemons, and walnuts; Florida - citrus fruits; Kentucky - tobacco; Maine - cranberries; New York - onions; and Oregon - filberts. The purpose of the survey is to provide:

1. Counts and measurements which are used to forecast or estimate crop yield per acre.

2. Counts and weights of the crop left in the field or orchard after harvest to estimate harvesting losses per acre.

3. Changes in acreage intended for harvest based on sample fields being plowed up or destroyed before harvest.

b. The June Enumerative Survey is a probability survey in that each surveyed land tract is randomly selected. The survey is conducted by personal interview with enumerator observation, comments, or quotes from the operator to supplement. It includes land use, crop acreage, livestock, numbers of farms, and farm labor. This survey provides basic data for published major crop acreage estimates, as well as hog and cattle inventories.

c. The December Enumerative Survey is a probability subsample from the June Enumerative Survey land tracts. This survey provides basic data for setting year-end cattle, hog, and chicken inventory numbers. It also provides initial information on intentions for planting acreages for wheat and rye.

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	d. The Agricultural Labor Survey is conducted quarterly by mail and personal interviews with farm operators or agricultural service firms. It provides timely data on wage rates and estimates agricultural laborers employed at the State, regional, and national level.		
	e. Integrated Survey Program (ISP) combines several probability survey questionnaires into one survey. These surveys may be conducted as frequently as once a month and are designed to reduce the reporting burden on respondents and still collect the data needed in a timely manner. The type of survey data collected is dependent on the state and the survey date.		
	f. The Farms Costs and Returns Survey is conducted annually to estimate production expenditures of farmers by major expenditure categories. The survey also collects cost-of-production data for specific types of farming enterprises on a rotating basis. The survey is a probability interview survey with samples drawn from lists of large farms or farms with the enterprises chosen for that year. An area sample unit is selected to account for operations not on the list.		
	PRIMARY MASS SURVEY SOURCE DATA		
	(Arrange by file code, then alphabetically by survey title, date and/or assigned processing program code as applicable.)		
32.	Survey Data Source Documents. This includes questionnaires completed by interviewers, landowners, farm/ranch operators, producers, processors, or agribusiness operators. Also included are sample count reporting forms and comments, and recordings for computer-assisted telephone interviews (CATI).	NC1-354-78-1 Item 32	
	a. Crops Price Support Payment Source Documents. Documents with OMB approval number 0535-0003. Crops		

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	subject to deficiency or other Federal price support payments and program administration include: feed grains, wheat, rice, and cotton, or others. Break files at end of each survey year. Destroy 3 years after complete primary source data are verified as satisfactory and complete. NOTE: These documents are subject to GAO audit. b. All Other Source Documents. Destroy 30 days after primary data summary is verified as complete and satisfactory. The Statistician-in-Charge or Branch Chief has the option of retaining source documents longer than the minimum designated if needed for editing the next succeeding survey or for other anticipated future needs. However, each such decision must be weighed individually and the retained documents destroyed as soon as the need is met. NOTE: All other input and intermediate machine-processing records are covered by GRS 20, Part II, Items 3-12. (See the NASS Files Maintenance/Disposition Manual and the SSO Files Maintenance/Disposition Manual for complete disposition instructions.)		
33.	Compiled Primary Survey Source Data. These data are the final, edited data ready for summary. For most of the automated systems, the final, edited data file is referred to as the "edited raw data input" for summary programs. NOTE: Each surveying office may select the record media it prefers for its records files. All other media documenting the same data are to be disposed as soon as immediate program requirements are satisfactorily complete. a. Price Support Payments Data. Compiled primary data which include prices received for crops subject	NC1-354-78-1 Item 33	

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	to Federal deficiency or other price support payments, and records pertaining to program administration. Break files at end of each survey year. Dispose of the preferred record media 3 years after satisfactory completion of survey data summary for crops subject to deficiency or other Federal payments. NOTE: These records maybe subject to GAO audit. b. Other Compiled Primary Source Data. Dispose of the preferred record media 14 months after satisfactory completion of the survey data summary. The Statistician-in-Charge of the surveying office may selectively authorize delayed destruction of the records for a particular survey if the quality of a future, similar survey may be jeopardized. However, each such decision must be weighed individually and the retained records destroyed as soon as the need is met.		
34.	Survey Working Papers. Records include tabulations, forms, and lists used to edit, correlate, process, compile, and transmit primary source data. Also, includes routine correspondence and reports which relate to survey data collection and which may supply or request more information than is included on survey forms. a. Surveys Related to Price Support Payments. Papers for surveys including prices-received data for crops subject to Federal deficiency or other price support payments, and records pertaining to program administration. Break files at end of each survey year. Destroy 3 years after satisfactory verification of survey data summary. NOTE: These records may be subject to GAO audit. b. All Other Survey Working Papers.	NC1-354-78-1 Item 34	

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Destroy upon satisfactory verification of survey data summaries. Transfer to FRC is not authorized.

SURVEY DATA SUMMARY RECORDS

Survey data summaries reflect summarized raw survey data by geographical area or strata. Although summaries generally serve as the basis to aggregate survey indications, they are not the official record of the survey indications. Survey summaries, include State, geographic, or national computation sheets and listings, change slips, and intermediate computation sheets.

35. NASS Headquarters Survey Summary Records. (Arrange by file code, then alphabetically by survey title, commodity, and/or geographical area.) Manual, printed, microfiche, or magnetic media machine-readable records of summarized survey data. — NC1-354-78-1 Item 35

a. Annual Surveys. Break files annually. Destroy the preferred record media when 7 years old or when final Agriculture Census review is satisfactorily completed, whichever is sooner.

b. Periodic Surveys Conducted Biannually or Less Often.

Break files annually. Destroy 2 years after satisfactory updating of data on the next survey.

c. One-Time Surveys and Special Studies.

1. Paper copy.

Permanent. Offer to the National Archives when data are of no further value for reference.

2. Machine-readable records.

Destroy after subsequent data files that contain detail data have been created and proven satisfactory.

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36.	SSO Survey Summary Records. (Arrange by file code.) Manual, printed, microfiche, or magnetic media machine-readable records of summarized survey data. a. Annual Cooperative Surveys. Break files annually. Destroy the preferred record media when 7 years old or when final Agriculture Census review is satisfactorily completed, whichever is sooner. b. Periodic Cooperative Surveys Conducted Biannually or Less Often. Break files annually. Destroy 2 years after satisfactory completion of the next survey that updates the data. c. Periodic State-Sponsored Surveys Conducted Biannually or Less Often. Break files annually. Dispose according to State regulations or requirements. If no State regulations exist, destroy as for periodic cooperative survey summaries. (Item 36. b.) d. One-Time State Cooperative Surveys and Special Studies. Destroy when of no further reference value to filing office or when 15 years old, whichever is sooner. e. One-Time State-Sponsored Surveys. Offer to State Archives when no longer of further value for reference. Transfer to FRC is not authorized. NOTE: NASS Headquarters and SSO's dispose of all other media documenting these survey summary data after satisfactory verification of the preferred media summary record.	NC1-354-78-1 Item 36	

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37.	Survey Comments and Recommendations. (Arrange by file code, then alphabetically by survey title and/or geographical area.) Manual, printed, typed, microfiche, or magnetic media machine-readable records of Headquarters and/or the SSO's. These are comments, observations, or recommendations which explain and/or affect statistical review and adjustment of survey indications or summarized data. Break files annually. Destroy along with the survey data summaries to which they apply when 7 years old or when final Agriculture Census review is satisfactorily complete, whichever is sooner.	NC1-354-78-1 Item 37	
	SURVEY ESTIMATES RECORDS Electronic records will be transferred in accordance with the provisions of 36 CFR 1228.188. Documentation pertaining to electronic records scheduled for transfer to the National Archives is permanent and transferred with related electronic records.		
38.	NASS Headquarters Official Crop Estimates Data Base. The survey estimates records are published official estimates of commodities adopted by the Agricultural Statistics Board. The data base provides a reliable source of official crop estimates for the agency and other information users. It supports publication of monthly Crop Production and Annual Crop Summary releases by the Agricultural Statistics Board. a. Magnetic media machine-readable records of official crop estimates based on data provided by SSO's. The major data elements by crop include: Acres planted, harvested, and yield per acre, production, and stocks (on hand). Monthly sales and disposition are estimated for selected crops. Permanent. Break file at 5-year intervals to coincide with the Agriculture Census. Transfer to	NC1-354-78-1 Item 38	

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	NARA Machine-Readable Archives after final census review is completed. b. Manual and machine-printed records of official crop estimates and indications, which are not available in machine-readable form. Includes all types of crops such as grains, other field crops, nuts, peanuts, fibers, fruits, vegetables, flowers, and foliage plants. Records include Agricultural Statistics Board statistical forecasts and estimates based on summarized survey indications and analysis, comments, and recommendations. Break files annually at end of each crop year. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
39.	NASS Headquarters Official Peanut Stocks and Processing Estimates. Includes Agricultural Statistics Board statistical estimates and comments for the U.S., based on primary statistical survey data collected from millers, warehouses, and processors. May also be based on computations for certain products. Primary data are collected monthly by NASS Headquarters. These records support the information network for the agency, other information users, and publication of a monthly estimates release. a. Magnetic media machine-readable records of official peanut stock and processing estimates for the U.S. Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized. b. Manual and machine-printed records of official peanut stocks and processing estimates, which are not available in machine- readable form. Records include forecasts and estimates based on summarized survey indications and analysis, comments, and recommendations.	NC1-354-78-1 Item 39	

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	Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
40.	NASS Headquarters Official Crop Estimates by County. (Arrange by file code, then alphabetically by crop and/or geographical location and crop year.) These records provide a reliable source of official crop estimates and indications at the county level for statisticians and other information users.	NC1-354-78-1 Item 41	
	a. Magnetic media machine-readable records of official crop estimates at the county level. The major data elements include commodity (crop), acres planted, acres harvested, yield per acre, and total production for a specific county. Permanent. Break files at 5-year intervals to coincide with the Agricultural Census. Transfer to the National Archives after the final census review is completed.		
	b. Manual and machine-printed records of official county estimates of crops and other agricultural elements, which are not available in machine-readable form. Includes statistical forecasts and estimates based on survey indications and analysis, comments, and recommendations. Data consist of processed aggregates of primary statistical survey data summarized from SSO surveys of farmers. NOTE: These files are maintained by the SSO's. Break files annually at end of crop year. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
41.	NASS Headquarters Official Estimates of Fertilizer. (Arrange by file code, then alphabetically by title and/or geographical location and year.) Sources of	NC1-354-78-1 Item 42	

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	primary statistical survey data are manufacturers and State Control Officials. SSO's collect and summarize data which are input to Headquarters' records to support monthly and annual summary releases. Headquarters' consolidated estimates data provide a reliable source of fertilizer statistics by State.		
	a. Magnetic media machine-readable records of official estimates of commercial fertilizer consumed.		
	Break file annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
	b. Manual and machine-printed records of commercial fertilizer official estimates, which are not available in machine-readable form. Includes summarized primary survey data, and statistical estimates from SSO's.		
	Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
42.	NASS Headquarters Official Dairy Estimates. (Arrange by file code, then alphabetically by title and/or geographical area and survey year.) These records serve as the source for monthly, quarterly, and annual releases; agency review; and comparative data for NASS and other information users.	NC1-354-78-1 Item 43	
	a. Annual Release of Dairy Estimates.		
	Record copies of the printed version are scheduled in items 16 and 17 of this schedule. Destroy when no longer needed for administrative use.		
	b. Magnetic media machine-readable records of official dairy statistical survey estimates provided by SSO surveys. The major data elements include the		

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	number of milk cows, milk production, disposition, and income at State and U.S. levels. Permanent. Break file in 5-year intervals to coincide with the Agriculture Census. Transfer to NARA Machine-Readable Archives after the final census review is completed. c. Manual or machine-printed records of official dairy estimates, which are not available in machine-readable form. Includes official statistical estimates based on survey indications and analysis, comments, and recommendations. May also be based in part on manufacturer and processor surveys or computations for certain commodities, products, or other agricultural elements. Data consist of processed, aggregated primary data summarized from SSO- or Headquarters-conducted surveys of farmers/producers. Break files at end of each survey year. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
43.	NASS Headquarters Official Estimates of Manufactured Dairy Products. (Arrange by file code, then alphabetically by title and/or geographical area.) The official estimates file provides the historic master record and ability to create camera-copy listings of U.S. totals by month and total production of dairy products by month and by State. Primary statistical survey data are collected from dairy manufacturing plants, then processed and summarized by SSO's. Input to Headquarters is reviewed, edited, and processed for published monthly releases and annual summary release. a. Annual Summary Release of Manufactured Dairy Products. Record copies of the printed version are scheduled in items 16 and 17 of this schedule. Destroy when no longer needed for administrative use.	NC1-354-78-1 Item 44	

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	b. Magnetic media machine-readable records of official estimates of production, utilization, and prices of manufactured dairy products. Major products include: cheeses, butter, dry milk, canned milk, cream, and frozen products. Major data elements recorded are: commodity and State, monthly and annual totals, number of plants, and confidential code.		
	Permanent. Break file at 5-year intervals to coincide with the Agriculture Census. Transfer to NARA Machine-Readable Archives after the final census review is completed.		
	c. Manual or machine-printed records of official estimates of manufactured dairy products production, utilization, and prices of milk used for manufacturing, which are not available in machine-readable form. Data include official statistical estimates based on survey indications and analysis, comments, and recommendations. May also be based in part on computations for certain related commodities, products, or agribusiness economic elements.		
	Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
44.	NASS Headquarters Official Dairy Production Estimates. (Arrange by file code, then alphabetically by title and/or geographical area.) The U.S. primary statistical survey data are collected from producers by SSO's, then processed, summarized, and input to Headquarters. Summary data are reviewed, edited, processed, and summarized for the U.S. These records support the information network and published monthly releases.	NC1-354-78-1 Item 45	
	a. Monthly Releases of Official Dairy Production Estimates.		

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	Record copies of the printed version are scheduled in items 16 and 17 of this schedule. Destroy when no longer needed for administrative use. b. Magnetic media machine-readable records of official estimates of milk production and price per hundred weight by States and for the U.S. Major data elements include: 1. Monthly number of milk cows. 2. Milk production per cow. 3. Total milk production for States. Permanent. Break file at 5-year intervals to coincide with the Agriculture Census. Transfer to NARA Machine-Readable Archives after final census review is completed. c. Manual or machine printed-records of official milk production and price estimates by States and for the U.S., which are not available in machine-readable form. Data include official statistical estimates based on survey indications and analysis, comments and recommendations. May also be based in part on computations for certain related products or agribusiness economic elements. Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
45.	NASS Headquarters Official Estimates of Meat Animals Production, Disposition, and Income. (Arrange by file code, then alphabetically by title and/or geographical area.) Official estimates are based on farmer/producer surveys which are processed and summarized by SSO's or by Headquarters for the U.S. May also be based in part on computations for certain commodities, products, or agribusiness economic elements. These records support the	NC1-354-78-1 Item 46	

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information network, published monthly and annual summary releases, and day-to-day reference by NASS and other information users.

a. Magnetic media machine-readable records of official estimates of cattle, hogs, and sheep production, supply, disposition, and income (1970 to date). Major data elements include:

1. Cattle, hog, or sheep beginning inventory, births, inshipments, marketings, farm slaughter, and deaths.

2. Production and marketings in pounds, annual average price, value of production, cash receipts, value of home consumption, and gross income.

Permanent. Break file at 5-year intervals to coincide with the Agriculture Census. Transfer to NARA Machine-Readable Archives after final census review is completed.

b. Manual or machine-printed records of official estimates of cattle, hog, and sheep production, supply, disposition, and income, which are not available in machine-readable form. Major data elements include:

1. Meat animal inventory, births, inshipments, marketings, farm slaughter, and deaths.

2. Production and marketings in pounds, annual average price, value of production, cash receipts, value of home consumption, and gross income.

Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.

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7. ITEM NO.	8. DESCRIPTION OF ITEM (WITH INCLUSIVE DATES OR RETENTION PERIODS)	9. SAMPLE OR JOB NO.	10. ACTION TAKEN
46.	NASS Headquarters Cattle and Calves Data Base System. (Arrange by file code, then alphabetically by title and/or geographical area and survey year.) SSO's collect primary survey data from farmers/producers; then process, summarize, and input to Headquarters via network. File contains official estimates supporting published semi-annual releases. a. Magnetic media machine-readable records of official cattle inventory estimates (1970 to date). Major data elements include: 1. All cattle, all cows, beef cows, milk cows, bulls over 500 pounds, all heifers over 500 pounds, and calves under 500 pounds. 2. Calf crop and operations with cattle. Permanent. Break file at 5-year intervals to coincide with the Agriculture Census. Transfer to NARA Machine-Readable Archives after final census review is completed. b. Manual or machine-printed records of official cattle inventory estimates, which are not available in machine-readable form. Data include inventories of all cattle, cows, bulls, heifers, steers, and calves. Also includes the official statistical estimates and forecasts based on survey indications and analysis, comments, and recommendations. Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.	NC1-354-78-1 Item 47	
47.	NASS Headquarters Cattle-on-Feed Data Base System. (Arrange by file code, then alphabetically by title and/or geographical area.) Official estimates are based on farmer/feeder surveys processed by SSO's and summarized. These records support the information network and published monthly and quarterly estimates releases.	NC1-354-78-1 Item 48	

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	a. Magnetic media machine-readable records of official cattle-on-feed estimates by States (1968 to date). Major data elements include: 1. Cattle on feed by date, placements, marketings, and other disappearance. 2. Steers by five weight groups, heifers by four weight groups, cows and others. Permanent. Break file at 5-year intervals to coincide with the Agriculture Census. Transfer to NARA Machine-Readable Archives after final census review is completed. b. Manual or machine printed records of official cattle on feed estimates by States not available in machine-readable form, include: 1. Cattle on feed by date, placements, marketings, and other disappearance. 2. Steers by five weight groups, heifers by four weight groups, cows and others. Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
48.	NASS Headquarters Hog and Pig Data Base System. (Arrange by file code, then alphabetically by title and/or geographical area and survey year.) SSO's collect primary survey data from farmers/producers; then process, summarize and input to Headquarters via network. a. Magnetic media machine-readable records of official hog and pig estimates. File contains official estimates supporting published reports (1969 to date). Major data elements include:	NC1-354-78-1 Item 49	

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	1. Inventory of all hogs, breeding hogs, and market hogs. 2. Estimates for quarterly sow farrowings, pig crops, and intentions to farrow. 3. The number of hog operations (1970 to date). Permanent. Break file at 5-year intervals to coincide with the Agriculture Census. Transfer to NARA Machine-Readable Archives after final census review is completed. b. Manual or machine-printed records of official hog and pig inventory and production estimates, which are not available on magnetic media. Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
49.	NASS Headquarters Official Livestock Products Estimates. (Arrange by file code, then alphabetically by title and/or geographical area and survey year.) Major data are collected directly from slaughter plants through the combined cooperation of the Agricultural Marketing Service, Food Safety and Inspection Service, and the Agricultural Statistics Board, NASS. a. Magnetic media machine-readable records of official livestock slaughter estimates (1976 to date). Major data elements include head kill, live weight, dressed weight, and red meat production by species and class for hogs (pork), cattle (beef and veal), and sheep (mutton and lamb). Permanent. Break file at 5-year intervals to coincide with the Agriculture Census. Transfer to NARA Machine-Readable Archives after final census review is completed.	NC1-354-78-1 Item 50	

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	b. Manual or machine-printed records of official livestock slaughter estimates, which are not available in machine-readable form. Data include official statistical estimates based on survey indications and analysis, comments, and recommendations. May also be based in part on computations for certain commodities, products, or agribusiness economic elements. Data consist of processed, aggregate primary data summarized by SSO's or from Headquarters-conducted national surveys of slaughter plants or other agency reports. The major data elements include head kill, live weight, dressed weight, and red meat production by species and class for hogs (pork), cattle (beef and veal), and sheep (mutton and lamb). Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
50.	NASS Headquarters Official Wool and Mohair Estimates. (Arrange by file code, then alphabetically by title and/or geographical area and survey year.) Primary survey data collected from farmers, ranchers, and producers are edited, processed, and summarized by SSO's and input to Headquarters via network. These records support the information network and a published annual summary. a. Annual Summary of Wool and Mohair Estimates. Major data elements include: 1. Number of sheep and goats shorn. 2. Volume of wool and mohair production. 3. Price received by sheep growers and mohair prices received by growers in Texas. Record copies of the printed version are scheduled in items 16 and 17 of this schedule. Destroy when no longer needed for administrative use.	NC1-354-78-1 Item 51 Item 54	

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	b. Background or working papers. Data include statistical estimates and forecasts for wool and mohair estimates based on survey indications and analysis, comments, and recommendations. Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
51.	NASS Headquarters Official Sheep and Goats Inventory Estimates. (Arrange by file code, then alphabetically by title and/or geographical area and survey year.) Primary survey data collected from farmers, ranchers, and producers are edited, processed, and summarized by SSO's and input to Headquarters via network. These records support the information network and a published annual report. a. Annual Summary of Sheep and Goats Inventory. Major data elements include: 1. All sheep and lamb inventory, value per head, and stock sheep inventory by class. 2. Sheep and lambs on feed inventory. 3. Annual lamb births, and new crop lambs. 4. Operations with sheep. 5. Goat inventory and value for Texas. Record copies of the printed version are scheduled in items 16 and 17 of this schedule. Destroy when no longer needed for administrative use. b. Background or working papers. Data include statistical estimates and forecasts for sheep and goat inventories based on survey indications and analysis, comments, and recommendations.	NC1-354-78-1 Item 52 Item 53 Item 54	

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	Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
52.	NASS Headquarters Official Mink Production Estimates. Data include the number of pelts produced, price and value, number of pelts produced by major color classes by State for major states and the U.S., and the number of females bred for the next season. Records support the annual publication. a. Annual Mink Production Estimate. Record copies of the printed version are scheduled in items 16 and 17 of this schedule. Destroy when no longer needed for administrative use. b. Background or working papers. Data include statistical estimates and forecasts for official mink production estimates based on survey indications and analysis, comments, and recommendations. Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.	NC1-354-78-1 Item 55	
53.	NASS Headquarters Official Honey Production Estimates. These records support the information network and a published annual summary. a. Annual Summary of Honey Production. Data include: 1. Number of bee colonies. 2. Volume of beeswax produced. 3. Honey production volume, stocks, and prices.	NC1-354-78-1 Item 56	

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	Record copies of the printed version are scheduled in items 16 and 17 of this schedule. Destroy when no longer needed for administrative use. b. Magnetic media machine-readable records. Permanent. Break file at 5-year intervals to coincide with the Agriculture Census. Transfer to NARA Machine-Readable Archives after final census review is completed. c. Background or working papers. Data include statistical estimates and forecasts for official honey production estimates based on survey indications and analysis, comments, and recommendations. Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
54.	NASS Headquarters Official Poultry Estimates. (Arrange by file code, then alphabetically by title and/or geographical area.) Official estimates are based on primary survey data collected by SSO's from producers and hatcheries and summarized for input to Headquarters via network. These records support the information network and published monthly and annual summary releases. a. Magnetic media machine-readable records of official poultry production, disposition, and income estimates by States and the U.S. Major data elements include: 1. Inventories of poultry by class and value, chickens sold, value of production of broilers, eggs, and hatchings. 2. Monthly production of eggs and number of hens and pullets of laying age. Monthly hatchings by hatcheries.	NC1-354-78-1 Item 57	

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7. ITEM NO.	8. DESCRIPTION OF ITEM (WITH INCLUSIVE DATES OR RETENTION PERIODS)	9. SAMPLE OR JOB NO.	10. ACTION TAKEN
	Permanent. Break file at 5-year intervals to coincide with the Agriculture Census. Transfer to NARA Machine-Readable Archives after final census review is completed. b. Manual or machine-printed records of official poultry production, disposition, and income estimates by States and the U.S., which are not available in machine-readable form. Includes official statistical forecasts and estimates based on survey indications and analysis, comments, and recommendations. May also be based on data reported by other agencies and in part on computations for certain commodities, products, or agribusiness economic elements. Official estimates are based on primary survey data collected by SSO's, or nationally by Headquarters, and summarized. Data include: 1. Inventories of poultry by class and value, disposition, income, value of broilers, chickens, eggs, and hatchings. 2. Eggs, broilers, and turkeys. eak files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
55.	NASS Headquarters Official Federally Inspected Poultry Slaughter Estimates. (Arrange by file code, then alphabetically by title and/or geographical area.) Official estimates are based on the Food Safety and Inspection Service (FSIS) Federal Inspection reports. May also be based in part on other agency reports, computations of certain products, or agribusiness economics elements. These records support the information network and published monthly releases and annual summaries and releases.	NC1-354-78-1 Item 58	

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7. ITEM NO.	8. DESCRIPTION OF ITEM (WITH INCLUSIVE DATES OR RETENTION PERIODS)	9. SAMPLE OR JOB NO.	10. ACTION TAKEN
	a. Annual Summary of Federally Inspected Poultry Slaughter Estimates. Permanent. Break files at 5-year intervals to coincide with the Agriculture Census. Transfer to NARA when the final census review is completed.		
	b. Manual or machine-printed records of official Federally inspected poultry slaughter estimates for selected States and the U.S., which are not available in machine-readable form. Includes official statistical estimates of number of head and live weight pounds of poultry slaughtered and number of pounds used in processing, cut-up, and packaged under Federal inspection. Data are based on FSIS Federal Inspectors' reports. May also be based in part on other agency reports, computations for certain products, or agribusiness economic elements. Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
56.	NASS Headquarters Official Egg Products Production Under Federal Inspection Estimates. (Arrange by file code, then alphabetically by title/or geographical area.) Official estimates are based on FSIS Federal Inspection reports. May also be based in part on other agency reports, computations of certain commodities, products, or agribusiness economic elements. These records support the information network, published monthly releases, and annual summary releases. a. Magnetic media machine-readable records of official estimates of egg products produced under Federal inspection. Major data elements include: 1. Number of eggs broken at processing plants.	NC1-354-78-1 Item 59	

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	2. Volume of liquid, frozen, and dried egg products produced under Federal inspection. Record copies of the printed version are scheduled in items 16 and 17 of this schedule. Destroy when no longer needed for administrative use. b. Manual or machine printed records of official estimates of egg products produced under Federal inspection, which are not available in machine-readable form. Data are based on FSIS Federal Inspectors' reports. May also be based in part on other agency reports, computations for certain products, or agribusiness economic elements. Includes official statistical estimates of: 1. Number of eggs broken. 2. Volume of liquid, frozen, and dried products produced under Federal inspection. Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
57.	NASS Headquarters Official Cold Storage Commodities Volume Estimates. (Arrange by file code, then alphabetically by title and/or geographical area.) Data consist of official estimates and forecasts based on survey data collected from refrigerated warehouses by SSO's or Headquarters. Primary data are edited, processed, and summarized for regions and the U.S. These records support the information network and published monthly releases and annual summaries. a. Magnetic media machine-readable records of official estimates of commodity volumes in cold storage by region and for the U.S. Major data elements record the total pounds of meats, dairy products, poultry, egg products, fruit and fruit products, and vegetables in refrigerated storage.	NC1-354-78-1 Item 60	

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	Permanent. Break file at 5-year intervals to coincide with the Agriculture Census. Transfer to NARA Machine-Readable Archives after final census review is completed. b. Manual or machine-printed records of official estimates of commodity volumes in cold storage by region and for the U.S., which are not available in machine-readable form. Data include the total pounds on hand of major commodities in refrigerated storage at the end of each month. Official estimates and forecasts are based on survey indications and analysis, comments, and recommendations collected from refrigerated warehouses by SSO's or Headquarters. Primary data are edited, processed, and summarized for each region and the U.S. Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.		
58.	NASS Headquarters Official Agricultural Prices Paid and Farm Labor Estimates. (Arrange by file code, then alphabetically by title and/or geographical area.) Official estimates are based on primary survey data collected by SSO's from farms and agribusinesses, which are then summarized and submitted to Headquarters. These records support the information network of the agricultural statistics program which includes indices. Data are published in monthly or quarterly releases and an annual summary by States, regions, and the U. S. Manual or machine-printed records which are not available in machine-readable form. Data summaries and supporting documents for official estimates are based on surveys and supporting data provided by the SSO's. Primary source data are edited, processed, and summaries are input to Headquarters for further processing. Estimates may also be based in part on other agency reports and/or private data sources.	NC1-354-78-1 Item 61	

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	Major data elements include: 1. Prices paid by farmers for farm production goods and services and associated price indexes. 2. Number of farm workers and wage rates. Break files annually. Record copies of the printed version are scheduled in items 16 and 17 of this schedule. Destroy when no longer needed for administrative use.		
59.	NASS Headquarters Official Farm Costs and Returns Data. (Arrange by file code, then alphabetically by title and by major classifiers.) Official estimates are based on primary survey data collected by SSO's from agricultural enterprises, which are then summarized and submitted to Headquarters. These records support the information network of the agricultural statistics program. Data are published annually by geographic regions and economic class of farm. Manual or machine-printed records of official farm costs and returns data, which are not available in machine-readable form. Data summaries and supporting documents for official estimates are based on surveys and supporting data provided by the SSO's. Primary survey data are edited, processed, and summaries are input to Headquarters for further processing. Major data elements include: 1. Detailed expenditures for farm production goods and services. 2. Selected data on types or quantities of items purchased. Break file at the end of the calendar year. Record copies of the printed version are scheduled in items 16 and 17 of this schedule. Destroy when no longer needed for administrative use.		

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60.	NASS Headquarters Official Estimates of Prices Received by Farmers. (Arrange by file code, then alphabetically by title and/or geographical area.) Survey data are supplemented by data from other government agencies and/or private data sources. These records support the information network and the published monthly releases and annual summary releases. Official estimates are based on SSO-conducted surveys of: 1. Buyers and processors of agricultural commodities. 2. Farmers, ranchers, and producers of agricultural commodities. a. Magnetic media machine-readable records of official estimates of prices received by farmers for States and the U.S. Major data elements include: 1. Monthly and season average prices received by farmers for agricultural commodities by States and for U.S. 2. Indexes of agricultural commodity prices. Permanent Break file at the end of the calendar year. Transfer to NARA Machine-Readable Archives after publication of annual summary. Data reference files in manual, printed, microfiche, or duplicate magnetic media may be retained to meet continuing agency needs. b. Manual and machine-printed records which are not available in machine-readable form.. Data summaries and supporting documents for official estimates are based on surveys conducted by SSO's. Primary survey data are edited, processed, and summaries are input to Headquarters for further processing. Estimates may also be based in part on other agency reports and/or other data sources.	NC1-354-78-1 Item 62	

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Break files annually. Destroy when no longer needed for administrative use. Transfer to FRC is not authorized.

61. SSO Estimates Records. (Arrange by file code, then alphabetically by survey title and/or commodity.) — NC1-354-78-1 Item 63

Manual, printed, microfiche, or magnetic media machine-readable records of initial estimates and forecasts based on summarized survey data and initial computations and the officially issued figures. Records cover each survey conducted by the SSO.

a. Cooperative Federal-State Surveys.

Break files annually at end of year in which survey cycle is completed, whether annually, biannually, or less frequently performed. Dispose after third cycle.

b. State-Sponsored Surveys.

Retain records indefinitely for day-to-day reference needs. Offer all estimates records of a discontinued survey to State Archives when records of final survey are 3 years old, or when no longer needed for reference. If offered records are refused, they may be destroyed.

SURVEY INDICATION RECORDS

(Arrange by file code, then alphabetically by survey title and/or commodity and geographical area.)

Indication records are aggregates of summarized sample survey data (sometimes adjusted by inclusion of various weighting factors) upon which official estimates are based. The results are meaningful for a specific geographical area, crop-growing region, or other specifically identified size group. Official estimates are based on these indications. Includes computations for certain commodities and

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	reflects survey indications relating to production, yield, price, inventory, disposition, and other statistics for individual States and/or the nation. May include documents used to record official survey indications, Agricultural Statistics Board action, State input summaries to Headquarters, shuttle sheets, etc. These records may be in manual, machine printout, microfiche, or magnetic media machine-readable form. These records are continuously referred to in day-to-day operations.		
62.	NASS Headquarters Indications Records. a. Cooperative Periodic Surveys. Break files at end of year in which a survey cycle is completed, whether annually, biannually, or less frequently performed. Destroy after subsequent data files that contain detail data have been created and proven satisfactory. b. Federal and Cooperative One-Time Surveys. Break file at end of year in which survey is completed. Destroy after subsequent data files that contain detail data have been created and proven satisfactory.	NC1-354-78-1 Item 64	
63.	SSO Indications Records. a. Cooperative Federal-State Periodic Surveys. Break files at end of year in which a survey cycle is completed, whether annually, biannually, or less frequently performed. Destroy after subsequent data files that contain detail data have been created and proved satisfactory. b. Cooperative Federal-State One-Time Surveys. Break files at end of year in which survey is completed. Destroy after subsequent data files that	NC1-354-78-1 Item 65	

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	contain detail data have been created and proven satisfactory. c. State-Sponsored Periodic Surveys. Break files at end of year in which survey cycle is completed, whether annually, biannually, or less frequently performed. Destroy according to State Government regulations. If no such regulation exists, destroy when 2 years old. d. State-Sponsored One-Time Surveys. Break files at end of year in which survey is completed. Summaries for one-time State-sponsored surveys should be offered to State Archives when no longer of further value for reference. If offered records are refused, they may be destroyed.		

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 14 1989

OFFICE OF
ADMINISTRATION
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MANAGEMENT

The Honorable Robert E. Wise, Jr., Chairman
Government Information, Justice, and
Agriculture Subcommittee
Committee on Government Operations
B-349-C Rayburn House Building
Washington, DC 20515

Dear Congressman Wise:

I am pleased to respond to specific questions about the Environmental Protection Agency's Toxic Release Inventory (TRI).

The attached responses provide more detail about the Agency's plans for releasing the TRI database to the public and address related questions about EPA's policies for public dissemination of information. Please do not hesitate to call me or Connie Tasker (475-8675) for further information.

Very truly yours,

Edward J. Hanley

Edward J. Hanley, Director
Office of Information
Resources Management

Attachment

cc: Charles Elkins, Director
Office of Toxic Substances

Responses to Additional Questions
Edward J. Hanley's Testimony of April 18, 1989

Question 1. *Please provide more details about EPA's plans to make the TRI database available to depository libraries, including the pilot CD-ROM distribution through the Government Printing Office. What type of software will be provided to CD-ROM recipients?*

CD-ROM

GPO will send a survey form to each of the depositories in advance of production giving each library the option to select this medium. Approximately 400 depository libraries will receive the pilot CD-ROM version of the TRI data through GPO. In addition, EPA plans to distribute about 300 copies. It is anticipated that, should the pilot prove successful, additional copies of the TRI data on CD-ROM will be distributed in subsequent years.

FICHE

A full COM-fiche set of the national data will be distributed to the Regional depository libraries and to each State Library. GPO will distribute State data to the remaining depositories. In addition, EPA will distribute a COM-fiche version of the TRI data for the state to a non-depository library in every county.

NATIONAL REPORT

EPA is also preparing a National Report which will provide a statistical overview of the national data from the TRI database. A copy of the National Report will be distributed to all of the depositories.

TYPE OF SOFTWARE FOR CD-ROM

EPA will use a commercial software package and requires that the software support full text indexing, full text searching, field specific searching, boolean combinations using the logical AND, OR, NOT, range searching, truncation searching, and arithmetic computation (ability to compute or to import data to a spreadsheet or similar package where computations can be performed.) User interfaces must be provided at two levels:

- Menus for the novice user
- Commands for the more experienced user.

In addition, the software must have a save (query or test) feature, support downloading to a microcomputer, print results to hard copy printers, display results on the screen, and provide help messages and an explanation of commands and functions available at the touch of a function key or highlight bar.

Software search and retrieval programs will be available on magnetic floppy disk. TRI data will be on the compact disc. The search software, the CD-ROM, and documentation will comprise the package to be distributed.

In addition to the products described above, EPA will make the entire TRI database available on magnetic tape and has also produced state subsets for distribution. These products--the COM-fiche and the CD-ROM versions of the TRI data--will be available for purchase by the public from GPO and NTIS.

Question 2. What thought is being given to providing TRI information to small community organizations like volunteer fire departments? Are other EPA databases -- whether or not maintained in a form currently accessible to the general public -- available to all types of communities? Describe both the information and the possible users.

The Office of Toxic Substances (OTS) has focused on meeting the requirements of the legislations and has not yet targeted other specific points of distribution, like volunteer fire departments. Section 313 of the Emergency Planning and Community Right to Know Act of 1986 did not, itself, require that data under Section 313 be directly submitted to local governmental entities, although it must be submitted to a designated office in each state. In addition to this state access point, however, OTS has designed the TRI to make the data available to the widest possible user community. Evaluation of TRI may well indicate the need to include specifically small community organizations in addition to the central state distribution office. Our current plans take such a distribution strategy into account. OTS has done this by combining on-line computer access through the National Library of Medicine with various "other means" of distributing the data. These other means include:

- Offering the full computer tape through the Government Printing Office (GPO) and the National Technical Information Service (NTIS)
- Offering the full database on CD-ROM through the same two sources
- Distributing subsets of the database on computer output microfiche.

The on-line version of the database will be available to any organization which registers with the National Library of Medicine and is willing to pay the nominal ($18.00 to $25.00 per hour) charges.

Both the microfiche and CD-ROM versions are also designed to reach local communities. Microfiche versions of each state's data will be distributed to local county libraries in accordance with plans developed in concert with each state librarian. In addition to county libraries, fiche and CD-ROM will be distributed to EPA regional libraries, state 313 contacts and 1400 Federal Depository libraries. There are a minimum of two depository libraries per congressional district. We believe that this distribution strategy ensures access to the TRI data by all communities regardless of size. The use of multiple methods of access was also designed to allow access to users who may not have access to a computer.

There are over 500 individual information systems in EPA. While EPA guarantees public access to Agency information, the public does not have direct access to these databases which are designed and operated to meet the Agency's regulatory and enforcement mission. These systems also contain certain categories of data not readily available to the public, including "enforcement sensitive" data, confidential business information, or data protected by the Privacy Act. A catalogue of EPA systems with abstracts is maintained in the Agency's Information System

Inventory (ISI) which is available through NTIS and EPA regional libraries. The Agency is committed to improving public access to information on environmental risk and health data, much of which is in document collections rather than automated databases. These document collections include the Agency's public dockets on rulemaking, the Administrative Record on Superfund site cleanup and the Asbestos in Schools Program.

Question 3. How will fees for the different versions of the TRI database be established? If fees are intended to recover costs, please identify as specifically as possible which costs will be recovered.

EPA does not intend to recover directly any Agency costs associated with the development, production, replication and distribution of the "other means" products. However, GPO and NTIS will recover their usual reproduction and distribution costs in accordance with their respective authority for determining fees based on marginal recovery of costs.

Prices for all TRI products will be set by GPO and NTIS in accordance with respective legislative authority, regulations, policies and guidelines for setting user fees for public access to Federal government publications in various media. At the present time, neither precedents nor guidelines for pricing the CD-ROM have been established by either GPO or NTIS. This is a new publication medium and a fee must be established.

Question 4. Please submit a copy of the rules or guidelines that will govern waiver of fees for users of the TRI database.

The Office of Toxic Substances (OTS) is currently developing the fee waiver guidelines. When complete, we will be glad to provide a copy for your information. The pilot fee waiver program, expected to begin this summer, will be announced through a Federal Register notice and is expected to allow access to groups which might otherwise not be able to obtain the data.

Question 5. *Will free terminals for public or press use be provided by the EPA? If not, why not? Would the EPA be willing to provide free public terminals in other government facilities if there is adequate demand?*

Terminals for accessing the TRI database will be available through EPA libraries. We need to gain experience supporting this kind of a public service before we commit to expanding the number of terminals and service sites available to the public. The cost of the terminals themselves is but one component of the investment and expertise needed to ensure responsive public access to the TRI information. Other more important costs and capabilities include software and communications technology appropriate for public access and the infrastructure needed to assure effective user support. In addition, we do not yet have the experience to determine whether there is public or press demand for free terminal and other forms of access to TRI data beyond those already planned. We plan to re-visit this issue after the first year's experience with TRI.

Question 6. *How has OMB Circular A-130 affected the design or operation of the TRI database? Please describe any actions that have been taken because of Circular A-130 that would not have been taken anyway.*

The general principles articulated in this Circular that the public has the right to access information gathered by the Federal government have guided the design and operation of the TRI database.

Question 7. *The SEC Authorization Act of 1987 requires that EDGAR information may be used or resold without restriction and without payment of royalties. Would the application of this requirement to the TRI database require any changes in design or operation?*

This requirement would require no changes in the design or operation of the TRI database.

Question 8. The SEC Authorization Act of 1987 requires that EDGAR users must be able to obtain information by direct interconnection with the EDGAR system. Would the application of this requirement to the TRI database require any changes in design or operation? Would there be any significant advantages to public users?

Direct interconnection to the TRI database through EPA's internal computing utility would require considerable changes without significant advantages to public users.

It makes no difference to users whether they are directly connected or are accessing a copy in paper, CD-ROM or COM-fiche as long as the information is the same. EPA's internal computing utility is neither designed nor budgeted to permit direct public access, and the costs of doing so would be substantial. Design and management decisions ensure the integrity of the TRI database regardless of the means by which the public accesses it.

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
EDGAR MANAGEMENT

May 23, 1989

The Honorable Robert E. Wise, Jr.
Chairman
Subcommittee on Government Information,
Justice, and Agriculture
House of Representatives
B-349-C Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Wise:

Enclosed are my responses to the questions attached to your letter of April 25, 1989, which supplement my testimony of April 18, 1989 before the Subcommittee on Government Information, Justice, and Agriculture.

Thank you for the opportunity to testify at the April 18th hearing on federal information dissemination policies and practices. If you have any further questions, please contact me.

Sincerely,

John O. Penhollow

John O. Penhollow
Director

Enclosure

QUESTIONS FROM CHAIRMAN WISE REGARDING THE EDGAR PROGRAM

1. Q. You indicated that the SEC has no plans to make electronic versions of filings available to depository libraries. Have any depository libraries contacted the SEC to inquire about the possible availability of EDGAR filings? Has the SEC initiated any contact with depository libraries regarding access to EDGAR?

A. None of the depository libraries contacted the SEC to inquire about the possible availability of EDGAR filings. Furthermore, the SEC has not initiated any contact with depository libraries regarding access to EDGAR.

2. Q. Will archival copies of EDGAR data be maintained permanently in electronic format such as CD-ROM? If so, please describe the plans in more detail. If not, please explain the plans for disposal of non-current EDGAR filings.

A. Archival copies of EDGAR data will not be maintained permanently in CD-ROM format. Official copies of all EDGAR filings will be archived on microfiche in accordance with the requirements of the National Archivist.

Current EDGAR electronic filings will be stored on-line on high performance magnetic disk units. Initially, all non-current EDGAR electronic data will be stored off-line on high density magnetic tape. However, the EDGAR contractor may later elect to replace the magnetic tape with some form of optical storage, although not necessarily CD-ROM technology. The migration from on-line to off-line storage of EDGAR filings will be based on retention schedules furnished by the SEC.

3. Q. How difficult would it be to prepare and distribute at fixed intervals CD-ROM disks containing the whole EDGAR database or subsets of the database?

A. As stated in the previous answer, at this time, the SEC does not intend to purchase the equipment necessary to generate CD-ROM diskettes. However, if funding were available, it would not be technically difficult to create CD-ROM diskettes containing all or part of the EDGAR data base. As an alternative, these diskettes might be produced and distributed by the dissemination contractor at fixed intervals under a regulated price schedule. However, the SEC currently anticipates that one or more of the Level I or Level II subscribers will decide to create and sell CD-ROM diskettes to the public.

4. Q. Would the prospect of providing EDGAR data to depository libraries be simpler if the SEC were not under an obligation to provide online access to time sensitive information.

A. The obligation to provide online access to time sensitive information would not prevent the SEC from providing EDGAR filings on CD-ROM to the depository libraries if there is a demand for that form of dissemination and the necessary funds are provided.

5. Q. You testified that the SEC Authorization Act of 1987 did have an impact on the EDGAR procurement. Did any of the requirements of that Act significantly increase the costs of the system? If so, please be as specific as possible.

A. In general, the EDGAR procurement was impacted by the requirements of the Authorization Act, particularly new Section 35A(d)(1) of the Securities Exchange Act of 1934, and the EDGAR Request for Proposals ("RFP") was subsequently amended to respond to some of these requirements. However, some of the requirements were already covered in the original RFP.

To date, the requirements of Section 35A(d)(1) have not significantly increased the cost of the EDGAR system. However, Section 35A(d)(3)(A) may increase filer costs in the short run. The section states that the Commission, by rule or regulation shall require all persons who make any filing with the Commission to submit such filings in written or printed form for a period of at least one year after the effective date specified for such person or class or for a shorter period if the Commission determines that the EDGAR system is reliable, provides a suitable alternative to such written and printed filings, and assures that the provision of information through the EDGAR system is as effective and efficient for filers, users, and disseminators as provision of such information in written or printed form. Although this requirement will not increase the cost of the EDGAR system, it may increase the cost of filing, particularly for those filers who are participating in the SEC's pilot EDGAR program, many of whom have modified their internal operations to prepare only electronic versions of their filings.

6. Q. What procedures will the SEC follow in setting fees for regulated public services? Will a proposed fee schedule be published for public comment?

A. The EDGAR dissemination contractor has already begun a market survey to determine the number of prospective subscribers to regulated services. Once that market study is completed, and once actual costs for building and operating the dissemination subsystem are known, the SEC plans to have the EDGAR dissemination contractor propose a schedule of fees for regulated services based on the actual and projected costs of the dissemination subsystem divided by the number of subscribers, including the dissemination subcontractor. The SEC will then analyze those costs to ensure that the fees are justified and uniform. The SEC will also ensure that dissemination activities are not predatory or anti-competitive.

In addition, an annual review of operations will be conducted by the SEC, based in part on an audit of operations by an independent accounting firm to be selected by the contractor subject to prior SEC approval or at the SEC's discretion by the Defense Contract Auditing Agency. This audit will be conducted under the direction of the SEC and will review all aspects of regulated services. It will also review any and all other contractor activities related to EDGAR to ensure that costs of service are properly apportioned between the regulated and unregulated activities and between all subsystems.

The SEC does not plan to publish the fee schedule for public comment.

7. Q. How will the SEC handle requests from deserving members of the public or the press for waiver of EDGAR fees?

A. The SEC has no plans to grant waivers of EDGAR fees to members of the public or the press. As stated in the following answer, the SEC will provide free use of EDGAR terminals for public or press use.

8. Q. Will the SEC provide free terminals for public or press use? Would the SEC be willing to provide free public terminals in other government facilities if there is adequate demand?

A. Users of the SEC's Public Reference Rooms and Press Room will be provided with free access time to the EDGAR system functionality. However, these users will be charged for paper copies of any EDGAR information they request. Subject to availability of funds, the SEC is willing to provide similar EDGAR access to other government agencies if there is a demand for such access. We have already approached several agencies but interest in such access seems low at this time.

9. Q. How has OMB Circular A-130 affected the design or operation of EDGAR? Please describe any actions that have been taken because of Circular A-130 that would not have been taken anyway.

A. As you know, OMB Circular A-130 has as its stated policy that agencies should look first to private sources when planning information activities and not disseminate information that might otherwise be sold by private companies. The EDGAR project has, from its inception, followed this policy. However, agency economic considerations pointed toward a decision to proceed with EDGAR using a private company even had the OMB policy as stated in Circular A-130 not been applicable. The final funding basis for EDGAR was impacted by discussions with OMB, GAO and Congress.

APPENDIX 2.—CORRESPONDENCE ON COST OF PROVIDING SERVICES TO DEPOSITORY LIBRARIES

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

SEP [illegible] 1989

20 SEP 1989

Honorable Bob Wise
Chairman, Subcommittee on Government
Information, Justice, and Agriculture
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

Thank you for your letter requesting that the Patent and Trademark Office (PTO) estimate the cost of providing the automated patent and trademark systems information to certain libraries.

Enclosed are estimates of the significant hardware and communications costs that would be incurred in extending to the Patent Depository Libraries (PDLs) one system, the patent image search service, that we will provide to the Corps of Patent Examiners. We have made a number of simplifying assumptions to develop these estimates as quickly as possible. These assumptions are detailed in the enclosed estimates.

The estimated costs, particularly those associated with acquiring the necessary high-speed communication links, are substantial. Nevertheless, these estimates are lower than the actual costs that would be incurred in providing this service because our assumptions tend to understate the actual costs. On September 5, 1989, Assistant Commissioner Giammo discussed the enclosed estimates with Robert Gellman of the Subcommittee staff and provided him with additional details.

Sincerely,

Donald J. Quigg
Assistant Secretary and Commissioner
of Patents and Trademarks

Enclosure

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
ASSISTANT SECRETARY AND COMMISSIONER
OF PATENTS AND TRADEMARKS
Washington, D.C. 20231

20 SEP 1989

Honorable Bob Wise
Chairman, Subcommittee on Government
Information, Justice, and Agriculture
Committee on Government Operations
House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

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Enclosed are estimates of the significant hardware and communications costs that would be incurred in extending to the Patent Depository Libraries (PDLs) one system, the patent image search service, that we will provide to the Corps of Patent Examiners. We have made a number of simplifying assumptions to develop these estimates as quickly as possible. These assumptions are detailed in the enclosed estimates.

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Sincerely,

SGD: JEFFREY M. SAMUELS

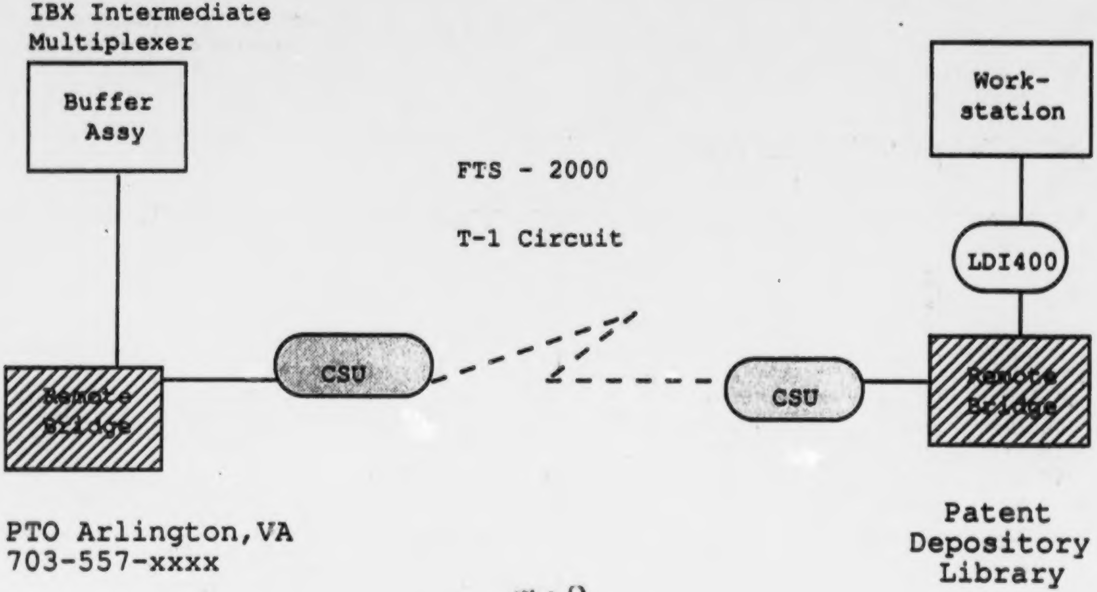
Donald J. Quigg
Assistant Secretary and Commissioner
of Patents and Trademarks

Enclosure

Cost estimates -- extending APS image search to all 65 PDLs

Configuration item	One-time unit costs		Monthly unit costs		Quantity	Total Costs		
	Purch	Inst and Setup	Usage	Maint		One time	Monthly	Annual
IBX Intermed Bufr Assy	5,000	50		50	65	328,250	3,250	39,000
Local LDI400	750	8		8	65	49,238	488	5,850
Remote Bridge	9,000	90		90	130	1,181,700	11,700	140,400
APS Workstation	60,000	600		600	65	3,939,000	39,000	468,000
Interface Multiplexer	85,000	850		850	5	429,250	4,250	51,000
Site Preparation								
AC Unit	10,000				65	650,000	0	0
Circuit Breaker	65				65	4,225	0	0
Wiring		215			65	13,975	0	0
T-1 Circuit (FTS2000)		4,840	11,000		65	314,600	715,000	8,580,000
Totals						6,910,238	773,688	9,284,250

Notes:
1. One remote bridge is required at each end of the connection.
2. Site preparation cost estimates include materials and labor.


IBX Intermediate Multiplexer
Buffer Assy
FTS - 2000
T-1 Circuit
Work-station
LDI400
Remote Bridge
CSU
CSU
Remote Bridge
PTO Arlington,VA
703-557-xxxx
Patent Depository Library

Additional Hardware Requirement per PDL

Enclosure-- Assumptions

I. The service to be distributed is specifically the Classified Search, Image Retrieval (CSIR) System, currently being developed for the Corps of Patent Examiners. We have assumed that only the 65 Patent Depositiory Libraries would choose to participate in this service.

II. Only remote workstations and those components essential to form the communications links are costed. In particular, other hardware and software modifications or components that may be required at the central site have not been considered.

III. Remote high-speed communications links have been estimated using the most recent figures projected for T-1 service on FTS 2000. Two PDLs (Boston and Los Angeles) were costed in detail, with monthly usage figures of $4,742 and $18,718 respectively. The figure of $11,000 for monthly FTS usage for each PDL is an estimate rather than an average of precise values for the 65 PDLs. One PDL is in Anchorage, Alaska, and the monthly usage charge for this PDL may be substantially higher than the average.

IV. Documentation costs and the costs of training the PDL personnel who would support this system for the remote users have not been considered.

V. Monthly maintenance on remote configurations, estimated at 1% of purchase price, may be understated. For example, it may be necessary to establish local maintenance agreements and stock spare parts locally in order to ensure reasonable repair times for failed components. These costs have not been considered.

VI. The workstation costs reflect the inclusion of a laser printer in order to provide for the remote user the same high-quality printed output available to the patent examiner.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

October 5, 1989

OFFICE OF
ADMINISTRATION
AND RESOURCES
MANAGEMENT

Congressman Robert E. Wise, Jr., Chairman
Government Information, Justice, and
Agriculture Subcommittee
B-349-C Rayburn House Office Building
Washington, DC 20515

Dear Congressman Wise:

I am responding to your October 2, 1989 letter to Administrator Reilly requesting information which will help your response to issues before the Government Operations Committee related to the reauthorization of the Paperwork Reduction Act.

Specifically, you asked EPA to estimate how much it would cost the Agency to provide the 1400 depository libraries free online access to the Toxic Release Inventory (TRI) database. Our best estimate is an initial cost of $1,700,000 ($1.7M) per year for connect time to the TRI database available through the National Library of Medicine's (NLM's) TOXNET system. This estimate is based upon conversations with librarians who are familiar with and currently accessing the TRI thru NLM, and we realize that it is substantially larger than current use. Few depository libraries are using TRI at the present time. We assume that half the depository libraries (700) would access TRI if it were available at no charge. We also assume their initial usage would be the same as the librarians we spoke with--about two hours a week during regular office hours. Access would be through the current arrangement of a National Technical Information Service (NTIS) account (available at no cost to the libraries) with the NLM which charges a nominal rate of $25 per hour for CPU (Central Processing Unit) and telecommunication charges during prime shift which corresponds to regular office hours.

I would also like to pass along the opinion of these librarians that CD-ROM is the most efficient way to access the TRI data. However, if depository libraries had free access to online searching their use and therefore our costs would increase geometrically. User training and support services may also be required to assist the libraries with more complicated searches and queries as users became familiar with the database and its potential applications for research and analysis.

I hope these assumptions and estimates will be of value to you. Please feel free to call on me for any further assistance you or your staff may require in considering this important legislation.

Very truly yours,

Lawrence L. Fisher, acting for
Edward J. Hanley, Director
Office of Information Resource
Management

UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549

OFFICE OF
EDGAR MANAGEMENT

September 8, 1989

Chairman Robert Wise
House Of Representatives
Government Information, Justice
and Agriculture Subcommittee
B-349-C Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Wise:

This letter responds to your letter of August 29 in which you asked for an estimate of the cost to implement free access to EDGAR public reference terminals in 1400 Federal depository libraries. Since Mr. Bob Gellman of your staff had already alerted me to your need for such a cost estimate, my office and the EDGAR contractor, BDM International (BDMI), had already agreed on the basic assumptions and had developed a preliminary estimate when your letter arrived.

The basic assumptions and the associated cost estimates are contained in the enclosed letter from Mr. William McQuiggan of BDM, International. As you will note, we assumed 2000 EDGAR public reference terminals would be installed in 1400 Federal depository libraries during the 1991 to 1996 period.

If these terminals were used 25% of each business day on average, the estimated cost of installing and operating the EDGAR terminals during the 1991-1996 period would be approximately $63 million. The operating cost of these terminals at the same average usage level would be nearly $9 million per year. If these terminals were used 50% of each business day on average, the estimated cost of installing and operating the terminals would be approximately $78 million over the 1991-1996 period. At this usage level, the operating cost would increase to approximately $17 million per year.

The estimated cost to install and operate the terminals is clearly very sensitive to terminal usage. This is due to the data communication costs. To keep these costs low, BDMI assumed that a Public Data Network (PDN) would be employed to link each terminal with a second EDGAR Analysis and Review subsystem. BDMI also assumed that the communications link for each terminal would operate at 2400 bits per second which is relatively slow. A less costly solution would require elimination of the on-line service altogether. At that point one could talk about using CD-ROM and distributing the disks to the Federal depository libraries on a weekly basis. I did not ask BDMI to cost this alternative.

Chairman Robert Wise
Page Two

It is important to note that the enclosed cost estimates would not change materially if the 2000 terminals were deployed in half as many libraries but with twice as many terminals per library. On the other hand, the installation costs would decrease by approximately a third over the 1991-1996 period if the total number of terminals were cut in half.

If you or your staff have further questions regarding this estimate, please call me or the EDGAR Deputy Director, David Copenhafer on 272-3808.

Sincerely,

John O. Penhollow
Director

Enclosure:
SEC Letter on Cost Estimate for
Supporting EDGAR Workstations in
Federal Depository Libraries dated
September 6, 1989

cc: David Copenhafer, EDGAR Deputy Director
Nina Gross, Director of Legislative Affairs

BDM

A Ford Aerospace Company

BDM INTERNATIONAL, INC
7915 JONES BRANCH DRIVE
McLEAN, VIRGINIA 22102-3396
(703) 848-5000

DIRECT DIAL NUMBER
383-9315

BDM/SEC-WPN-05823-89

September 6, 1989

1989

Mr. John O. Penhollow
Director
Office of EDGAR Management
U.S. Securities & Exchange Commission
450 5th Street, N.W.
Washington, D.C. 20549

SUBJECT: Cost Estimate for Supporting EDGAR Workstations in Federal Depository Libraries

REFERENCE:
1. SEC Letter of August 21, 1989 on "EDGAR Cost Estimates"
2. Letter of August 31, 1989 on Cost Estimate for Federal Depository Libraries

Dear Mr. Penhollow:

We have conducted an analysis of the costs associated with installing and operating EDGAR workstations in Federal depository libraries. We conducted the analysis under the following assumptions:

1. The workstation would be similar to that planned for SEC public reference rooms.
2. Workstations would be on-line to the EDGAR system.
3. Terminal numbers are:

	New Terminals	Cumulative Terminals	New Libraries	Cumulative Libraries
1991-1992	400	400	400	400
1993-1994	800	1200	800	1200
1995-1996	800	2000	200	1400

4. Average public reference room terminal workload has been estimated at 15 minutes per session, one filing downloaded per session (120,000 characters of data); usage Level I is 25% of the average public reference room terminal (36 sessions per day); usage Level II is 50 percent of the average public reference room terminal.

Using the Level I usage estimate, we estimate the costs for FY 1991 through 1996 to be:

a.	Equivalent of a second Analysis and Review (A&R) subsystem. See Enclosure 1 from BDM best and final bid. Mead service is included.	$18,000,000
b.	Purchase and installation of terminals @ $5800 each	$11,600,000
c.	Maintenance of terminals (assumes one year warrantee) 1991 - 1992 $160,000 1993 - 1994 $480,000 1995 - 1996 $800,000	$ 1,440,000
d.	Communications (assumes 2400 bps dial-up access to public data network; does not include a separate phone line for each terminal which will be required)	
	- Transmission (PDN; $4,000 per year per terminal)	$28,800,000
	- SEC system front-end (PDN termination and T1 line)	$ 327,000
e.	Contractor fees	$ 2,600,000
	Total costs, 1991 - 1996	$62,767,000
	Annual Operating Cost Past 1996	$ 8,850,000

Workload assumptions are very critical to the cost of operating the system. If Level II workload estimates are used (each terminal generating 50 percent of the average public reference room terminal) the cost in 1991-1996 is increased by approximately $15,000,000, and the annual operating cost after 1996 is increased by approximately $8,000,000.

This letter contains our best estimates based on the limited information available. It is not a proposal. If you have any technical questions about these estimates, or if I can be of further assistance to you, please feel free to contact me.

Very truly yours,

BDM INTERNATIONAL, INC.

William McQuiggan

William P. McQuiggan
Vice President
Information Systems Engineering

WPM/dam

Enclosure: as stated

SUMMARIES BY CONTRACT YEAR

THE BDM CORPORATION

[illegible] SUBSYSTEM

* [illegible]
* [illegible]
PROPRIETARY DATA

	ITEM	FY-89 BASE	FY-90 OPT 1	FY-91 OPT 2	FY-92 OPT 3	FY-93 OPT 4	FY-94 OPT 5	FY-95 OPT 6	FY-96 OPT 7	OPT 8	TOTAL
	Labor - Hrs	14,081	20,724	20,750	20,755	12,300	12,300	12,300	12,300	3,107	129,583
	Labor Price	793,387	1,150,704	1,280,055	1,322,017	801,480	835,257	870,510	887,413	234,516	8,183,720
Stratus part only $1.9M	H/W Purchase	1,753,712	1,013,354	1,119,000	0	0	0	0	0	0	3,886,066
	H/W Maint	0	18,760	38,411	48,000	49,480	51,372	53,292	55,452	14,433	327,112
	S/W Purchase	73,738	460,361	163,934	0	0	0	0	0	0	700,133
	S/W Maint	1,838	9,456	9,820	10,280	10,504	11,004	11,424	11,880	3,087	79,101
	OTHER DIRECT COSTS										
	Publications	75,406	101,173	52,843	49,049	52,483	50,157	60,000	64,795	67,836	630,370
	Out of Town Travel	10,981	11,638	12,452	13,325	14,257	7,027	8,101	8,732	9,184	95,757
25%	Local Travel + Parking	10,849	14,465	14,465	14,465	14,465	14,465	14,465	14,465	3,617	115,721
100%	Supplies & Materials										
	Computer Paper	3,270	6,539	6,539	6,539	6,539	6,539	6,539	6,539	1,635	50,678
	Diskettes	709	709	709	709	709	709	709	709	354	6,026
	Printer Ribbons	172	172	172	172	172	172	172	172	85	1,461
	Tapes 2400 ft. Reel	2,342	3,512	5,854	2,927	5,854	5,854	2,927	2,927	878	33,075
	Materials (A-V)	0	2,653	0	0	0	0	0	0	0	2,653
	Total Supplies & Materials	6,493	13,585	13,274	10,347	13,274	13,274	10,347	10,347	2,952	93,893
	Furniture										
	Manager Chairs	10,140	0	0	0	0	0	0	0	0	10,140
	Manager Workstation	83,005	0	0	0	0	0	0	0	0	83,005
	Overstorage Units	60,003	0	0	0	0	0	0	0	0	60,003
	Processing Chairs	57,221	0	0	0	0	0	0	0	0	57,221
	Processing Workstations	249,192	0	0	0	0	0	0	0	0	249,192
	Support Chairs	9,600	0	0	0	0	0	0	0	0	9,600
	Support Workstations	29,322	0	0	0	0	0	0	0	0	29,322
	Total Furniture	507,452	0	0	0	0	0	0	0	0	507,452
	AT&T Lines (monthly charges)	0	21,557	124,104	124,104	124,104	124,104	124,104	124,104	31,041	797,222
	AT&T Lines (installation)	27,540	0	0	0	0	0	0	0	0	27,540
	LAN Equipment Purchase	0	723,371	0	0	0	0	0	0	0	723,371
	LAN Equipment Maintenance	0	68,671	73,736	73,736	73,736	73,736	73,736	73,736	12,185	524,282
	Training	0	80,190	74,000	0	0	0	0	0	0	154,290
100%	Sub - [illegible]	811,330	1,004,550	1,040,000	1,040,000	1,040,000	1,040,000	1,040,000	1,040,000	462,150	14,050,530
	Sub - [illegible]	1,941	0	0	0	0	0	0	0	0	1,941
	Sub - [illegible]	19,433	0	0	0	0	0	0	0	0	19,433
	Sub - Smithy & Breeden	449,453	0	0	0	0	0	0	0	0	449,453
50%	[illegible]	237,433	329,244	358,094	347,430	614,900	612,405	636,065	657,290	160,329	3,961,137
	Total	4,700,705	5,751,033	5,168,604	3,060,030	3,017,429	3,040,081	3,710,052	3,776,353	1,000,000	35,362,415

THE LIBRARY OF CONGRESS
WASHINGTON, D.C. 20540

GENERAL READING ROOMS DIVISION

October 18, 1989

Dear Mr. Wise:

This letter is in response to your request of October 2, 1989, for assistance in estimating how much it would cost the Library of Congress to provide remote access to the Library of Congress Information System (LOCIS) to 1,400 depository libraries across the United States.

As you know, we recently began a six-month pilot to put the Library of Congress online to the Nation by offering direct access to its automated bibliographic, Congressional bill-status, copyright and referral information to 14 test sites around the country. The aim of the pilot, which started in October, is to determine the feasibility, desirability, and need for remote online access to LOCIS. Since the pilot has just begun, we have no hard data yet on costs.

However, with the assistance of the Library's Information Technology Services, the online access pilot team estimates that expanding online access to 1,400 libraries would require $2,677,728 in start-up costs and a yearly appropriation of $423,228 (based on FY89 personnel and telecommunications costs) which obviously would increase in the ensuing years. Enclosed are a summary sheet and itemizations of capital and personnel costs, including any assumptions we made to reach those figures. All costs estimated are charges to the Library of Congress; as in the pilot, we have assumed the depository libraries would be responsible for their own telecommunications costs as is the usual practice in the library field.

For your information, however, we have estimated the following costs if the Library of Congress were to pay the telecommunications charges for the depository libraries: based on our earlier assumption of simultaneous access by 20 percent of the libraries, we estimate a range from a maximum of $1,764 an hour in telecommunications charges if we had full use; $882 an hour for 50 percent use, and $177 an hour for 10 percent use. It is important to note that even this range of costs is very rough, since so many factors which would influence the use (and thus costs) are unknown, e.g., number of hours a week each library is open; how many terminals each library makes available and where; time zone differences; and how many LC files are used by each library.

In addition, you should be aware that some versions of and data from the Library of Congress Information System are currently available on commercial databases sold by vendors such as Dialog, BRS, and OCLC. It seems likely that if depository libraries were offered free telecommunications in addition to free use of LOCIS, there might be some impact on the subscriptions to the commercial versions.

If I can help you further, please call me at (202) 707-5530.

Sincerely,

Suzanne E. Thorin
Acting Chief

Enclosures: Summary Sheet
Itemization

Honorable Robert E. Wise, Jr.
Committee on Government Operations
U.S. House of Representatives
Washington, DC 20515

October 18, 1989

Estimate for Providing the Library of Congress On-line System (LOCIS) to 1,400 Depository Libraries

SUMMARY SHEET

To provide 1,400 depository libraries access to the Library's online public files would require upgrades to the Library's mainframe computer and front-end processor; increased telecommunications costs; staff to provide troubleshooting, training and end-user documentation; and equipment for the user support office.

One-time Capital Costs	
Mainframe upgrade	$2,000,000
Front-end processor upgrade	150,000
Telecommunications	25,000
User support office equipment	79,500
	$2,254,500
Yearly Telecommunications and Personnel Costs	
Telecommunications	108,000
User support staff	315,228
	$ 423,228
Total first-year costs	$2,677,728
Total subsequent-year costs	$ 423,228

October 18, 1989

ITEMIZATION

Mainframe Upgrade $2,000,000

The IBM 3084 would need to be upgraded to a 3090 class machine that would double its computing power. Although the cost of the upgrade would be $4 million, only 50% of the upgrade cost should be attributed to support of the 1,400 depository libraries, since the IBM 3084 already supports Library applications and would be upgraded to maintain that support. Thus, $2 million is estimated.

Front-end Processor Upgrade $ 150,000

The upgrading of the front-end processor is already underway and will cost an estimated $300,000. Access by the 1,400 depository libraries would consume 50% of this increased power that would be unavailable for other purposes; therefore, $150,000 would be charged to supporting this service.

Telecommunications $ 133,000

Telecommunications costs are estimated for both Telenet and Direct Dial. These costs are based on an assumption of simultaneous access by 20% of the depository libraries.

Telenet communications are anticipated to support 90% of these accesses. In order to accommodate the libraries, LC would require two 56,000 baud Telenet lines costing $9,000/month, with a one-time installation charge of $4,000.

Subtotal .... $ 4,000 one-time
108,000 per year

Direct Dial support to handle 10% of the accesses will require 28 simultaneous connections, estimated at $750 per connection.

Subtotal .... $ 21,000 one-time

User Support Staff $ 315,228.31

A user-support staff would be requested for troubleshooting and to provide training and documentation for the 1,400 libraries. The size of this office and its responsibilities are based on the existing support services provided to present remote and internal users. Figures include salaries and benefits.

One GS-13 Supervisor	$ 52,388.15
Five GS-9/11/12 Automation Support Specialists (Average based on the GS-11 step 1 salary.)	183,787.20

One GS-7/9 Technician	24,834.08
One GS-6 Secretary	23,839.08
One GS-9 Telecommunications Specialist (located in Information Technology Services)	30,379.80

User Support Office Equipment	$ 79,500

The staff of 9 will require personal computers with desktop publishing capabilities set up in a network configuration.

Personal computers (8 @ $3,000) .... $	24,000
Software (8 @ $1,000)	8,000
Graphics Workstation	8,000
Server Workstation	7,000
Laser Printers (2 @ $2,500)	5,000
Network Equipment/Software	
Boards (8 @ $500)	4,000
Connections to Mainframe	8,000
Communications Software (8 @ $500)	4,000
Copier	10,000
Fax	1,500

APPENDIX 3.—OFFICE OF MANAGEMENT AND BUDGET INFORMATION RESOURCES MANAGEMENT CIRCULAR

federal register

Tuesday
December 24, 1985

Part IV

Office of Management and Budget

Management of Federal Information Resources; Final Publication of OMB Circular No. A-130

OFFICE OF MANAGEMENT AND BUDGET

Management of Federal Information Resources

[Editorial Note: This reprint incorporates a correction that is published in the Federal Register of Monday, January 6, 1986.]

December 12, 1985.

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: OMB Circular No. A–130; final publication.

SUMMARY: This Circular provides a general policy framework for management of Federal information resources. The Circular implements provisions of the Paperwork Reduction Act of 1980 as well as other statutes, Executive Orders, and policies concerning general information policy, information technology, privacy, and maintenance of Federal records. The Office of Management and Budget (OMB) published a draft Circular for public comment on March 15, 1985, and received comments and suggestions from the public. This Circular supersedes OMB Circular Nos. A–71, A–90, A–108, and A–121.

DATE: This Circular is effective December 12, 1985.

FOR FURTHER INFORMATION CONTACT: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Room 3235 New Executive Office Building, Office of Management and Budget, Washington, D.C. 20503. Telephone: (202) 395–4814.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980, Pub. L. 96–511, 94 Stat 2812, codified at Chapter 35 of Title 44 of the United States Code, establishes a broad mandate for agencies to perform their information activities in an efficient, effective, and economical manner. Section 3504 of the Act provides authority to the Director, Office of Management and Budget (OMB), to develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

This Circular implements OMB authority under the Paperwork Reduction Act with respect to section 3504(b), general information policy, section 3504(e), records management, section 3504(f), privacy, and section 3504(g), Federal automatic data processing and telecommunications; the Privacy Act of 1974 (5 U.S.C. 552a); sections 111 and 206 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et seq.); and Executive Order No. 12046 of March 27, 1978. The Circular complements 5 CFR Part 1320, Controlling Paperwork Burden on the Public, which implements other sections of the Paperwork Reduction Act dealing with controlling the reporting and recordkeeping burden placed on the public.

In addition, the Circular revises and consolidates policy and procedures in five existing OMB directives and rescinds these directives.

A–71—Responsibilities for the Administration and Management of Automatic Data Processing Activities
Transmittal Memorandum No. 1 to Circular No. A–71—Security of Federal Automated Information Systems
A–90—Cooperating with State and Local Governments to Coordinate and Improve Information Systems
A–108—Responsibilities for the Maintenance of Records about Individuals by Federal Agencies
A–121—Cost Accounting, Cost Recovery, and Interagency Sharing of Data Processing Facilities

Development of the Circular

On September 12, 1983, OMB published a Notice in the Federal Register, 48 FR 40964, announcing development of the OMB Circular on Federal information resources management and soliciting public comment. In response to this notice, OMB received comments from 14 Federal agencies and 39 members of the public. On March 15, 1985, OMB published its draft Circular on the Management of Federal Information Resources (50 FR 10734–10747), inviting the public to comment by May 14, 1985. OMB informally extended the public comment period in order to allow Federal agencies and the public more time to submit their views. By August 1985, OMB had received about 350 letters of comment; 52 percent of these were from the library and academic community, 28 percent were from other members of the public, and 20 percent from Federal agencies and Members of Congress.

Form of the Circular and Addition of Appendix IV

The draft Circular followed the form of a notice of proposed rulemaking, which is to say that the text of the proposed Circular was accompanied by Supplementary Information containing a lengthy analysis of key sections. The analysis explained the management context and philosophy behind the language of the draft Circular.

The Circular also follows the form of a notice of proposed rulemaking. Many who commented on the draft Circular requested that the explanatory contextual materials not be lost when the Circular was published in final form. OMB accepted this recommendation. Accordingly, in addition to the three appendices included in the draft Circular, OMB has added *Appendix IV, Analysis of Key Sections.* Appendix IV contains a revision and expansion of the analysis of key sections that accompanied the March 15 draft Circular.

This Supplementary Information section focuses on comments received to the March 15 draft Circular and the disposition OMB has made of the comments.

Additional Comment

Because of the perceived seriousness of deficiencies in the draft Circular of March 15, 1985, several commentators urged that OMB revise the draft, and issue the revision for another round of public comment. With the public notices of September 12, 1983, and March 15, 1985, OMB has twice sought public comment. After analyzing public comment on the March 15 draft and revising the Circular, OMB decided not to accept this recommendation. OMB believes that the Circular as now revised accommodates valid criticisms and objections, that adequate public comment has been sought, and sees little benefit and much delay in a third round of public comment.

Section-by-Section Analysis

Section 1. Purpose

OMB rejected a recommendation that the phrase "management of Federal information resources" be changed to "management and dissemination of Federal information resources" because the definitions of information resources management and government information already include dissemination within management.

Section 3. Authorities

OMB expanded the citation of the Federal Property and Administrative Services Act to include section 206 in order to reflect Federal telecommunication standards authorities. Executive Order No. 12472, Assignment of National Security and Emergency Preparedness

Telecommunications Functions, has been added to this section.

Section 4. Applicability and Scope

OMB revised this section to include a reference to national security and emergency preparedness telecommunications activities subject to Executive Order No. 12472. One commentator suggested that a general disclaimer be added here stating that the policies apply only where feasible, cost effective, and appropriate in the context of a particular activity. OMB rejected this suggestion because specific disclaimers are included in specific policies and because section 9a(1) assumes that heads of Federal agencies are responsible for managing their information resources in the context of particular activities and agency missions.

Another commentator suggested that the Circular address which guidance will be controlling in the event of inconsistency: the Circular or national security directives. OMB does not believe such inconsistencies exist until shown in specific instances; if they should exist, they should be resolved on an individual basis. Another commentator recommended that this section should make exception for the exclusions identified in the Warner Amendment in the Department of Defense Authorization Act of 1982. OMB believes these exclusions are appropriately treated in the contexts to which they apply, and notes that statute always takes precedence over policy guidance. For clarity, OMB added an explicit reference to this Department of Defense exclusion in the definition of information technology (Section 6h).

Section 6. Definitions

a. Agency. Although no one commented on the definition of "agency," OMB changed the definition because the previous wording was confusing and did not adequately convey that independent regulatory agencies are included within the meaning of the term.

b. Information. One commentator noted that the definition is broader than the definition of the same term in OMB's regulation, 5 CFR Part 1320. The breadth of the definition is due to the fact that the scope of the Circular is broader than the scope of the regulation. Another commentator believed there were major omissions in the definition, e.g., micrographics, printing and publishing, mail and distribution, libraries, voice communications, reprographics, audiovisual, and manual information systems. OMB believes these are information media, processes, or institutions, rather than information as such, and that the definition as formulated covers them.

c. Government Information. One commentator noted that the definition of "government information" does not include information that may be required to be maintained by a Federal agency, presumably as in Federal recordkeeping requirements imposed upon members of the public (e.g., individuals' tax records). OMB does not intend that such information should be considered government information, nor does the Circular extend to such information except as specifically provided (e.g., Appendix I, Section 3a(1)). Another commentator pointed out that the definition would include information maintained by the legislative and judicial branches of government. While it is true that the definition encompasses information held by the legislative and judicial branches, the Circular applies only to agencies of the executive branch as defined in Section 6a. Another recommended that the definition of government information be restricted only to information created or collected by the Federal Government, and not be extended to information processed, transmitted, disseminated, used, stored, and disposed of by the Federal Government. OMB rejected this recommendation because 44 U.S.C. 3504 clearly applies, for example, to information processing and records management.

Several commentators recommended that the definition should pertain to information "created . . . or disposed of by, *or on behalf of*, the Federal Government." (emphasis added) The intent of the recommendation was to make clear that the Circular's policies applied to all information under government control or sponsorship, irrespective of the information processing agent; that is, to include all information created, collected, processed, transmitted, disseminated, used, stored, or disposed of by government contractors or grantees.

OMB rejected the recommendation for several reasons. First, while agencies doubtless have the choice to treat information created or collected on their behalf as government information, OMB does not intend, except where explicitly stated, that policies in the Circular extend to persons or entities that create, collect, process, transmit, disseminate, use, store, or dispose of information on behalf of the government. Section 4 of the Circular states that the policies apply to executive agencies; Section 3a(1) of Appendix I is an explicit statement of application to Federal contracts. Second, existing and longstanding policy embodied in OMB Circular No. A-110, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations, permits grantees in such institutions to copyright information created or collected under Federal grants. The fact that such information may be copyrighted implies that the information is not government information, because the government may not copyright government information (17 U.S.C. 101 and 106). Third, the courts have held that requests to Federal agencies for release of information under the Freedom of Information Act do not always extend to those performing information activities under grant or contract to a Federal agency; hence, such information is not government information.

Several commentators recommended that government information be subdistinguished, with special definitions being formulated for, and special policy treatment given to, scientific and technical information, statistical information, or printed information. OMB did not accept the recommendation because the Circular is intended to implement the Paperwork Reduction Act, and the Act itself does not distinguish among various kinds of information.

f. and g. Access to Information and Dissemination of Information. The definitions of "access to information" and "dissemination of information," particularly when considered together with Section 8a on information management, drew more comment than any other definitions. Twenty-three persons commented on the definitions. Commentators specially objected to the phrase "upon their request" in the definition of access. They noted that the public may gain access to government information through Freedom of Information Act requests but argued that the Circular makes no provisions to ensure the public knows what information is available or how to obtain the information. They suggested that the tone of the definitions was narrow, negative, and restrictive, and the implications ran contrary to the proper role of government in providing information in a democratic society.

OMB believes that the definitions of access and dissemination, as found in the draft Circular, are sound. In OMB's view, the commentators' objections arose not out of the definitions themselves but out of the uses to which they were put in the draft Circular's policies and their explanation. Accordingly, OMB has made revisions

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to the policies and to the Analysis of Key Sections (Appendix IV), but has retained the definitions.

i. Information Technology Facility. Several persons pointed out the desirability of standardizing the definition of "information technology facility," as found in the Circular and Appendix II, with "information technology installation," as found in Appendix III. The two terms are retained because they apply to different contexts, and the relationship between the terms is explained in Appendix II, Section 2b.

k. Government Publication. A new term, "government publication," has been defined because a new policy statement pertains to government publications. The definition of the term is taken directly from statute (44 U.S.C. 1901).

Section 7. Basic Considerations and Assumptions

7a and 7b. These statements have been amended and broadened to reflect points raised in comments, namely, that the statements were too narrowly conceived.

Deleted statement. The draft Circular contained the statement: The value of government information to the government is solely a function of the degree to which the information contributes to achieving agencies' missions. Comments concerning this statement alleged that the statement underestimated the value of government information to the government, and failed to take account of other public needs, including those of State and local governments, that are included in the value of information to the Federal Government. Because of other revisions to Section 7, OMB determined the statement was superfluous and deleted it.

7c. A new statement has been inserted in response to many comments that the draft Circular failed to address the positive aspects of government information. The statement incorporates three of the purposes of the Paperwork Reduction Act (44 U.S.C. 3501).

7d. Commentators on this statement objected to the application of cost-benefit analysis to government information activities. Many stated that the benefits of government information cannot be easily calculated and that such information holds more benefits than simply economic. Recalling that the statement is an assumption underlying policy, not itself a policy prescription, OMB notes that the statement does not preclude the existence of benefits other than economic (some of which are enumerated in statement 7b) nor does it necessarily presuppose that benefits can be easily calculated. The statement has been revised to incorporate by reference the purposes of the Paperwork Reduction Act cited in the preceding statement. Ensuring that benefits exceed costs, insofar as these are calculable, is a means to minimizing burden and costs and maximizing usefulness.

7e. Because many commentators misperceived the role accorded the private sector in the draft Circular, a new statement has been added that summarizes the existing policy found in OMB Circular No. A–76, Performance of Commercial Activities. The import of the new statement is simply that policy stated in Circular No. A–76 is and consistently has been assumed to apply to the management of Federal information resources.

7g. Several commentators believed that this statement (formerly statement 7f) did not sufficiently recognize the importance of public disclosure of government information. The statement has been revised to strengthen this point.

One commentary focused on the fact that this statement pertained to the management of Federal agency records rather than management of Federal information resources. Although the Freedom of Information Act and the Privacy Act pertain only to information in agency records, the statement has been broadened, as a basic assumption, to extend to all information resources. The statement is not limited, either by intention or implication, to paper documents, but may also include electronic records.

7h. The comments on this statement (formerly statement 7g) offered suggestions already provided for in statute or policy; for example, a distinction involving statistical uses of personal information. No changes were made to the statement.

7j and 7k. These statements (formerly statements 7h and 7j) were revised to incorporate language suggested by commentators.

Section 8. Policies

a. Information Management.

(1) and (2). Information Collection and Sharing. Many commentators believed that the formulation of 8a(1) in the draft Circular was too narrow and restrictive, that in fact the Circular would limit the collection of information by Federal agencies more than was intended by the Paperwork Reduction Act. Revised policy statement 8a(1) uses the expression "necessary for the proper performance of the functions of the agency," which is taken directly from the language of the Act (44 U.S.C. 3504(c)(2)), and introduces a requirement for practical utility, also taken from same section of the Act. Some commentators believed the language should be couched in even broader terms, such as information needed by society or the general public. The intent of the Act, however, was to circumscribe, not to broaden, agency discretion to impose information collection and recordkeeping burdens on the public.

Commentators pointed out that many statutes condition the interagency or intergovernmental sharing of information by Federal agencies. Revised policy statement 8a(2) reflects the existence of such conditions. Many also commented on the phrase "or through commercial sources" in this statement. The revision qualifies this phrase and Appendix IV provides further explanatory analysis of the policy.

(3) through (6). Privacy Act and Freedom of Information Act. OMB revised statement 8a(3) to be consistent with statement 8a(1). Statements 8a(4)(b) and 8a(5) have been amended to eliminate ambiguity identified by commentators.

(8) through (12). Information Dissemination. Statements 8a(8) and 8a(9) in the draft Circular received more comments than any other sections. First, as regards the policy that dissemination be either required by law or essential to agency missions, commentators believed these criteria were too negative and restrictive, and failed to emphasize the positive value of government information dissemination and the obligation of the government to inform the citizenry. OMB reformulated both the Circular and the analysis in Appendix IV to emphasize the government's obligations to disseminate information, and to conform more closely to the language and intent of the Paperwork Reduction Act.

Second, commentators challenged the policy that agency information products or services should not duplicate similar products or services "that could reasonably be expected to be provided" by other agencies or the private sector "in the absence of agency dissemination." This policy was believed to be vague and impossible to apply. OMB acknowledges that "could reasonably be expected" is an inadequate formulation and has accordingly revised the policy. However, the general stricture against duplicating products or services that are or would otherwise be provided by other government or private sector organizations has been retained because the criterion of non-duplication for government information resources is clearly stated in the Act; if it is clear that an agency's dissemination would duplicate that of a private organization, the same considerations apply. The analysis in Appendix IV has been expanded to clarify the meaning of this policy.

Third, many commentators suggested that agencies provide adequate notice and opportunity for public comment before terminating information products and services. OMB believes this suggestion has merit as applied to any significant termination, and has incorporated the idea in the revised policy and Appendix IV. With respect to the non-duplication criterion, OMB added the provision that adequate notice should be provided before *initiating* new information products and services. This provision will allow other agencies and private sector interests to inform the initiating agency if a new product or service will duplicate their product or service, and hence satisfies the intent of the draft Circular's language. Further explanation of this policy is also found in Appendix IV.

Fourth, commentators questioned the language in the draft Circular's statement 8a(9)(a) requiring that agencies disseminate information products and services "in a manner that reasonably ensures the information will reach the members of the public the agency is responsible for reaching." OMB has slightly altered the language while providing a fuller explanation in Appendix IV.

Fifth, commentators challenged the language in the draft Circular's statement 8a(9)(b) that dissemination should be accomplished "in the manner most cost effective for the government, including placing maximum feasible reliance on the private sector . . ." OMB has retained this language, but added a reference to OMB Circular No. A-76 which provides the context for the policy and conditions that address most points raised by commentators. For example, OMB Circular No. A-76 distinguishes between functions that are inherently governmental in nature, and hence should be performed by government employees, and functions that are commercial in nature and may be performed by the private sector. Again, Appendix IV contains additional discussion of the role of the private sector in disseminating government information products and services.

Sixth, commentators criticized the reference to user charges in the draft Circular's statement 8a(9)(c). OMB has retained the draft Circular's language, because OMB Circular No. A-25 already takes account of objections raised. For example, some pointed out that the costs of assessing user charges can be greater than the revenues yielded from the charges; Circular No. A-25 provides for this contingency. Also, commentators failed to note that this policy statement requires user charges only for costs of dissemination of government information, not for creation, collection, processing, and transmission of the information. User charges also are more fully discussed in Appendix IV.

Seventh, in response to comments OMB added new language requiring that agencies establish procedures for ensuring compliance with 44 U.S.C. 1902 concerning Federal depository libraries. Many commentators referenced the Federal depository library program as an existing institutional mechanism for ensuring that much government information is disseminated to and actually reaches the general public. They believed the Circular should strengthen the depository library system. Because OMB agreed with the comments, and since the law provides that government publications be made available to the depository libraries, OMB accepted this recommendation; the Circular requires agencies to make government publications available to the depository library system, and Appendix IV elaborates this point.

b. Information Systems and Information Technology Management.

(1) through (3). One commentator recommended that these policies be expanded to include a requirement that agencies document a 10 percent return on information technology investments. OMB rejected this recommendation as being too specific for inclusion in a general policy statement.

(4) and (5). Several commentators recommended that these statements also include provision for cost effectiveness and meeting specific agency needs. OMB revised the policy to reflect this recommendation and also expanded on the point in Appendix IV.

(6) and (7). Commentators noted that the desirability of competition is sometimes conditioned by the fact that competitive processes unnecessarily slow down procurement of information technology, and that other requirements, such as the need for compatibility, may legitimately limit competitive processes. OMB recognizes the validity of these points but believes they may be taken into account without altering the policy statements.

(8). Commentators pointed out that agencies have some legitimate needs for customized software, and that acquisition of off-the-shelf software carries its own risks, such as uncertainty over continued maintenance. OMB believes that these quite meritorious considerations do not invalidate the policy statement as it stands.

(9). Several commentators said that the term "interconnectivity" has specific and limited meaning in telecommunications, and that "necessary compatibility" would better convey the meaning intended. OMB revised the policy to reflect these comments and expanded on the point in Appendix IV.

(14). Commentators recommended that the background materials for this policy statement be strengthened to stress the positive values of standards and that national security directives be referenced. OMB revised Appendix IV to reflect this recommendation and the fact that the General Services Administration issues Federal Telecommunications Standards.

(15). Several agencies commented that what may be cost effective for individual program managers may not be cost effective for the agency as a whole and that the policy as drafted places the burden of proof on the agency rather than the program manager. OMB recognizes the potential conflict between agency and program cost effectiveness but believes the burden of proof belongs with the agency to demonstrate that its arrangements for information technology facilities and services are the most cost effective for agency programs.

One commentator recommended that agency information technology facilities be permitted to charge users market rates rather than cost recovery, because cost recovery will not be competitive with market rates. OMB's view is that, if cost recovery is not competitive with market rates, this is prima facie evidence that agency information technology facility arrangements are not cost effective, and that program managers should be freed from mandatory use of such arrangements.

(16). Agencies commented that cost recovery systems may be expensive and should not be required where there is no clear benefit to such systems. OMB recognizes this problem and has revised Appendix II, but not the policy statement, to cover this contingency.

Section 8. Assignment of Responsibilities

Some commentators on this section objected to a perceived concentration in OMB of decisionmaking power over Federal information resources, believing that the Circular places program decisions in OMB's hands. OMB notes first that the Paperwork Reduction Act requires the director of OMB to develop and implement Federal information policies, principles, standards, and guidelines (44 U.S.C. 3504). Second, the Circular states, and Appendix IV emphasizes, that program decisionmaking for Federal information resources belongs with the heads of agencies, operating within the policy framework set forth by OMB.

Several commentators recommended that this section include a statement concerning the Federal depository libraries. OMB believes the addition of statement 8a(12)(b) regarding the depository libraries covers this recommendation. Also, OMB did not accept a commentator's recommendation that certain responsibilities be assigned to Federal libraries; such libraries are subunits of agencies and the Circular assigns responsibilities only at the agency level.

Several commentators recommended that OMB assign responsibility for the Office of Personnel Management to develop and implement occupational and position standards for information resources managers. OMB does not believe management of Federal information resources requires establishing new job titles and series. Furthermore, such establishment would require legislation and could not be legally accomplished through an OMB Circular.

Several Federal agencies requested that various statements assigning responsibilities be revised to include reference to their statutory or regulatory responsibilities. OMB reviewed these requests and determined that revisions were unnecessary. The Circular presupposes the existence of, and compliance with, other applicable laws and regulations.

a(8). In response to comments OMB revised this statement more accurately to reflect agency responsibilities for Federal records management.

a(9). OMB inserted a reference to convey that the "senior official" is identical to the provision of 44 U.S.C. 3506(b).

b(1). At the suggestion of a commentator, OMB substituted "information resources management policy" for "information policy" because the latter term is not defined or used elsewhere in the Circular.

e(4). One commentator noted that assigning GSA responsibility for providing guidelines and regulations on the *use* of information technology contravenes the Brooks Act (40 U.S.C. 759(g)). OMB revised the statement to reflect this point.

h(12). OMB revised the statement in the same manner as statement 9b(1).

Appendix I

Several commentators expressed concern that promulgation of the appendix would rescind the OMB "Guidelines on Implementing the Privacy Act," and others suggested combining the appendix with all guidance OMB has issued on the Act. OMB did not intend to replace existing guidance with the appendix. The appendix replaces only the procedural requirements contained in OMB Circular No. A-108. All other guidance remains in force, and OMB has revised the appendix to make that clear. OMB declined to follow the suggestion that the appendix and other guidance be combined, because the purposes of each issuance are different.

Other commentators pointed out inconsistencies in the timing of various reviews required by the Circular's different appendices; suggested clarifying by examples what constitutes a "minor change to a system of records"; suggested changing the timing of the review of section (m) contracts to more frequently than every five years, since review is conducted on a random sample basis and should not prove overly burdensome; and suggested that the first triennial review of routine uses be commenced immediately upon issuance of the Circular. OMB revised the appendix to reflect these comments. OMB added a requirement for an annual review of all systems notices; added certain data collection requirements for the annual report pursuant to section (p); and dropped a requirement for the Office of the Federal Register to provide OMB with a consolidated list of changes to agencies' systems of records.

Appendix II

Several commentators expressed concern about the cost effectiveness of requiring detailed accounting and chargeback for use of relatively small information technology facilities. OMB agreed with these comments. The intent of Appendix II is to encourage cost effective behavior in the management of Federal information technology resources. In revising the Appendix OMB raised the threshold so that the Appendix applies only to facilities having obligations in excess of $3 million per year.

A number of commentators pointed out that the Appendix does not allow facilities to justify resource requests based upon sharing, except in unusual circumstances. OMB revised the Appendix to clarify that this restriction is included because the normal practice is for users of a facility to include resource requests for the amount of technology use in their budget and appropriation requests.

Several commentators believed that requiring full costs to be recovered from all users within an agency would not be cost effective. OMB disagreed with this viewpoint and retained the draft Circular's formulation. Viable management of a large information technology facility requires that managers know the amount of resources devoted to each user when providing services. Furthermore, effective management of the use of information technology requires that the user have responsibility for and control over the resources consumed by use of the facility.

Finally, a number of commentators questioned the advisability of giving users of significant new applications primary responsibility for selecting which facility will support the applications. OMB disagreed and retained the draft Circular's formulation. When users are dependent on effective technology support to perform their function, control over selection of facility is essential and consistent with holding users responsible for producing their government information products.

Appendix III

Several commentators asked for clarification of the relationship between Appendix III and OMB Circular No. A-123. The Appendix itself relates certain of its requirements to requirements in Circular No. A-123 (e.g., annual reporting of security weaknesses as material weaknesses, and a separate assurance of the security of agency automated information systems in the annual internal control report required by Circular No. A-123). Beyond these specific requirements, application controls specified in the Appendix should be verified in vulnerability assessments and internal control reviews of the functional area supported by the application. Installation controls specified in the Appendix should be reviewed as one of the generic controls of an information technology unit itself.

Several commentators asked how the Circular relates to OMB Circular No. A-127, Financial Management Systems. The evaluation and reporting requirements for the systems integrity objective contained in OMB Circular No. A-127 may be met by fulfilling the evaluation and reporting requirements contained in Appendix III to this Circular and in OMB Circular No. A-123.

Several commentators also expressed confusion about the relation between Appendix III and security of national security information. OMB revised Appendix III to clarify that the Appendix provides a minimal set of requirements for the security of Federal automated information systems; required agencies to also incorporate additional requirements for security of information classified for national security purposes; and clarified central agency responsibilities related to national security information.

Several commentators suggested that Appendix III use the term "information technology facility" for consistency with the Circular and Appendix II. The term "information technology installation," as used in Appendix III, includes information technology facilities as well as small localized processing capabilities. OMB retained the term "information technology installation" in order to emphasize the importance of assuring adequate security of such smaller systems as well as of larger facilities. OMB expects that management processes for assuring a proper level of security at small installations will be less detailed and resource intensive than at larger facilities.

Several commentators expressed concern that personnel security responsibilities in the Appendix focused only on screening employees. They pointed out that other personnel activities, such as separation of duties and actions relating to employees leaving an agency, may be more cost effective security measures. OMB agreed with these comments and clarified the language concerning agency personnel programs so as not to limit agency personnel programs to employment screening of personnel, while still requiring employment screening as one tool in agency security programs.

Circular No. A-130

To the Heads of Executive Departments and Establishments

December 12, 1985.

Subject: Management of Federal Information Resources

1. *Purpose:* This Circular establishes policy for the management of Federal information resources. Procedural and analytic guidelines for implementing specific aspects of these policies are included as appendices.

2. *Rescissions:* This Circular rescinds OMB Circulars No. A-71, A-90, A-108, and A-121, and all Transmittal Memoranda to those circulars.

3. *Authorities:* This Circular is issued pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a), sections 111 and 206 of the Federal Property and Administrative Services Act of 1949 as amended (40 U.S.C. 759 and 487, respectively), the Budget and Accounting Act of 1921 as amended (31 U.S.C. 11), Executive Order No. 12046 of March 27, 1978, and Executive Order No. 12472 of April 3, 1984.

4. *Applicability and Scope:*

a. The policies in this Circular apply to the information activities of all agencies of the executive branch of the Federal Government.

b. Information classified for national security purposes should also be handled in accordance with the appropriate national security directives. National security emergency preparedness activities should be conducted in accordance with Executive Order No. 12472.

5. *Background:* The Paperwork Reduction Act establishes a broad mandate for agencies to perform their information management activities in an efficient, effective, and economical manner. To assist agencies in an integrated approach to information resources management, the Act requires that the Director of the Office of Management and Budget (OMB) develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

6. *Definitions:* As used in this Circular—

a. The term "agency" means any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government, or any independent regulatory agency. Within the Executive Office of the President, the term includes only the Office of Management and Budget and the Office of Administration.

b. The term "information" means any communication or reception of knowledge such as facts, data, or opinions, including numerical, graphic, or narrative forms, whether oral or maintained in any medium, including computerized data bases, paper, microform, or magnetic tape.

c. The term "government information" means information created, collected, processed, transmitted, disseminated, used, stored, or disposed of by the Federal Government.

d. The term "information system" means the organized collection, processing, transmission, and dissemination of information in accordance with defined procedures, whether automated or manual.

e. The term "major information system" means an information system that requires special continuing management attention because of its importance to an agency mission; its high development, operating or maintenance costs; or its significant impact on the administration of agency programs, finances, property, or other resources.

f. The term "access to information" refers to the function of providing to members of the public, upon their request, the government information to which they are entitled under law.

g. The term "dissemination of information" refers to the function of distributing government information to the public, whether through printed documents, or electronic or other media. "Dissemination of information" does not include intra-agency use of information, interagency sharing of information, or responding to requests for "access to information."

h. The term "information technology" means the hardware and software used in connection with government information, regardless of the technology involved, whether computers, telecommunications, micrographics, or others. For the purposes of this Circular, automatic data processing and telecommunications activities related to certain critical national security missions, as defined in 44 U.S.C. 3502(2) and 10 U.S.C. 2315, are excluded.

i. The term "information technology facility" means an organizationally defined set of personnel, hardware, software, and physical facilities, a primary function of which is the operation of information technology.

j. The term "information resources management" means the planning, budgeting, organizing, directing, training, and control associated with government information. The term encompasses both information itself and the related resources, such as personnel, equipment, funds, and technology.

k. The term "government publication" means informational matter which is published as an individual document at government expense, or as required by law.

Other definitions specific to the subjects of the appendices appear in the appendices.

7. *Basic Considerations and Assumptions:*

a. The Federal Government is the largest single producer, consumer, and disseminator of information in the United States. Because of the size of the government's information activities, the dependence of government information activities upon the public's cooperation, and the value of government information to the entire Nation, the management of Federal information resources is an issue of continuing importance to the public and to the government itself.

b. Government information is a valuable national resource. It provides citizens with knowledge of their government, society, and economy—past, present, and future; is a means to ensure the accountability of government; is vital to the healthy performance of the economy; is an essential tool for managing the government's operations; and is itself a commodity often with economic value in the marketplace.

c. The free flow of information from the government to its citizens and vice versa is essential to a democratic society. It is also essential that the government minimize the Federal paperwork burden on the public, minimize the cost of its information activities, and maximize the usefulness of government information.

d. In order to minimize the cost and maximize the usefulness of government information activities, the expected public and private benefits derived from government information, insofar as they are calculable, should exceed the public and private costs of the information.

e. Although certain functions are inherently governmental in nature, being so intimately related to the public interest as to mandate performance by Federal employees, the government should look first to private sources, where available, to provide the commercial goods and services needed by the government to act on the public's behalf, particularly when cost comparisons indicate that private performance will be the most economical.

f. The use of up-to-date information technology offers opportunities to improve the management of government programs, and access to, and dissemination of, government information.

g. Because the public disclosure of government information is essential to the operation of a democracy, the public's right of access to government information must be protected in the management of Federal information resources.

h. The individual's right to privacy must be protected in Federal Government information activities involving personal information.

i. The open and efficient exchange of government scientific and technical information, subject to applicable national security controls and proprietary rights others may have in such information, fosters excellence in scientific research and the effective use of Federal research and development funds.

j. The value of preserving government records is a function of the degree to which preservation protects the legal and financial rights of the government or its citizens, and provides an official record of Federal agency activities for agency management, public accountability, and historical purposes.

k. Federal Government information resources management policies and activities can affect, and be affected by, the information policies and activities of other nations.

8. *Policies:*

a. *Information Management.* Agencies shall:

(1) Create or collect only that informtion necessary for the proper performance of agency functions and that has practical utility, and only after planning for its processing, transmission, dissemination, use, storage, and disposition;

(2) Seek to satisfy new information needs through legally authorized interagency or intergovernmental sharing of information, or through commercial sources, where appropriate, before creating or collecting new information;

(3) Limit the collection of individually identifiable information and proprietary information to that which is legally authorized and necessary for the proper performance of agency functions;

(4) Maintain and protect individually identifiable information and proprietary information in a manner that precludes:

(a) Unwarranted intrusion upon personal privacy (see Appendix I); and

(b) Violation of confidentiality;

(5) Provide individuals with access to, and the ability to amend errors in, systems of records, consistent with the Privacy Act;

(6) Provide public access to government information, consistent with the Freedom of Information Act;

(7) Ensure that agency personnel are trained to safeguard information resources;

(8) Disseminate information, as required by law, describing agency organization, activities, programs, meetings, systems of records, and other information holdings, and how the public may gain access to agency information resources;

(9) Disseminate such information products and services as are:

(a) Specifically required by law; or

(b) Necessary for the proper performance of agency functions, provided that the latter do not duplicate similar products or services that are or would otherwise be provided by other government or private sector organizations;

(10) Disseminate significant new, or terminate significant existing, information products and services only after providing adequate notice to the public;

(11) Disseminate such government information products and services:

(a) In a manner that ensures that members of the public whom the agency has an obligation to reach have a reasonable ability to acquire the information;

(b) In the manner most cost effective for the government, including placing maximum feasible reliance on the private sector for the dissemination of the products or services in accordance with OMB Circular No. A-76; and

(c) So as to recover costs of disseminating the products or services through user charges, where appropriate, in accordance with OMB Circular No. A-25;

(12) Establish procedures for:

(a) Reviewing periodically the continued need for and manner of dissemination of the agency's information products or services; and

(b) Ensuring that government publications are made available to depository libraries as required by law.

b. *Information Systems and Information Technology Management.* Agencies shall:

(1) Establish multiyear strategic planning processes for acquiring and operating information technology that meet program and mission needs, reflect budget constraints, and form the bases for their budget requests;

(2) Establish systems of management control that document the requirements that each major information system is intended to serve; and provide for periodic review of those requirements over the life of the system in order to determine whether the requirements continue to exist and the system continues to meet the purposes for which it was developed;

(3) Make the official whose program an information system supports responsible and accountable for the products of that system;

(4) Meet information processing needs through interagency sharing and from commercial sources, when it is cost effective, before acquiring new information processing capacity;

(5) Share available information processing capacity with other agencies to the extent practicable and legally permissible;

(6) Acquire information technology in a competitive manner that minimizes total life cycle costs;

(7) Ensure that existing and planned major information systems do not unnecessarily duplicate information systems available from other agencies or from the private sector;

(8) Acquire off-the-shelf software from commercial sources, unless the cost effectiveness of developing custom software is clear and has been documented;

(9) Acquire or develop information systems in a manner that facilitates necessary compatibility;

(10) Assure that information systems operate effectively and accurately;

(11) Establish a level of security for all agency information systems commensurate with the sensitivity of the information and the risk and magnitude of loss or harm that could result from improper operation of the information systems (See Appendix III);

(12) Assure that only authorized personnel have access to information systems;

(13) Plan to provide information systems with reasonable continuity of support should their normal operations be disrupted in an emergency;

(14) Use Federal Information Processing and Telecommunications Standards except where it can be demonstrated that the costs of using a standard exceed the benefits or the standard will impede the agency in accomplishing its mission;

(15) Not require program managers to use specific information technology facilities or services unless it is clear and is convincingly documented, subject to periodic review, that such use is the most cost effective method for meeting program requirements;

(16) Account for the full costs of operating information technology facilities and recover such costs from government users as provided in Appendix II;

(17) Not prescribe Federal information system requirements that unduly restrict the prerogatives of heads of State and local government units;

(18) Seek opportunities to improve the operation of government programs or to realize savings for the government and the public through the application of up-to-date information technology to government information activities.

9. *Assignment of Responsibilities:*

a. *All Federal Agencies.* The head of each agency shall:

(1) Have primary responsibility for managing agency information resources;

(2) Ensure that the information policies, principles, standards, guidelines, rules, and regulations prescribed by OMB are implemented appropriately within the agency;

(3) Develop internal agency information policies and procedures and oversee, evaluate, and otherwise periodically review agency information resources management activities for conformity with the policies set forth in this Circular;

(4) Develop agency policies and procedures that provide for timely acquisition of required information technology;

(5) Maintain an inventory of the agencies' major information systems and information dissemination programs;

(6) Create, maintain, and dispose of a record of agency activities in accordance with the Federal Records Act of 1950, as amended;

(7) Identify to the Director, OMB, statutory, regulatory, and other impediments to efficient management of Federal information resources and recommend to the Director legislation, policies, procedures, and other guidance to improve such management;

(8) Assist OMB in the performance of its functions under the Paperwork Reduction Act, including making services, personnel, and facilities available to OMB for this purpose to the extent practicable;

(9) Appoint a senior official, as required by 44 U.S.C. 3506(b), who shall report directly to the agency head, to carry out the responsibilities of the agency under the Paperwork Reduction Act. The head of the agency shall keep the Director, OMB, advised as to the name, title, authority, responsibilities, and organizational resources of the senior official. For purposes of this paragraph military departments and the Office of the Secretary of Defense may each appoint one official.

b. *Department of State.* The Secretary of State shall:

(1) Advise the Director, OMB, on the development of United States positions and policies on international information policy issues affecting Federal Government information activities and ensure that such positions and policies are consistent with Federal information resources management policy;

(2) Ensure, in consultation with the Secretary of Commerce, that the United States is represented in the development of international information technology standards, and advise the Director, OMB, of such activities.

c. *Department of Commerce.* The Secretary of Commerce shall:

(1) Develop and issue Federal Information Processing Standards and guidelines necessary to ensure the efficient and effective acquisition, management, security, and use of information technology;

(2) Advise the Director, OMB, on the development of policies relating to the procurement and management of Federal telecommunications resources;

(3) Provide OMB and the agencies with scientific and technical advisory services relating to the development and use of information technology;

(4) Conduct studies and evaluations concerning telecommunications technology, and concerning the improvement, expansion, testing, operation, and use of Federal telecommunications systems and advise the Director, OMB, and appropriate agencies of the recommendations that result from such studies;

(5) Develop, in consultation with the Secretary of State and the Director, OMB, plans, policies, and programs relating to international telecommunications issues affecting government information activities;

(6) Identify needs for standardization of telecommunications and information processing technology, and develop standards, in consultation with the Secretary of Defense and the Administrator of General Servcies, to ensure efficient application of such technology;

(7) Ensure that the Federal Government is represented in the development of national and, in consultation with the Secretary of State, international information technology standards, and advise the Director, OMB, of such activities.

d. *Department of Defense.* The Secretary of Defense shall develop, in consultation with the Administrator of General Services, uniform Federal telecommunications standards and guidelines to ensure national security, emergency preparedness, and continuity of government.

e. *General Services Administration.* The Administrator of General Services shall:

(1) Advise the Director, OMB, and agency heads on matters affecting the procurement of information technology;

(2) Coordinate and, when required, provide for the purchase, lease, and

maintenance of information technology required by Federal agencies;

(3) Develop criteria for timely procurement of information technology and delegate procurement authority to agencies that comply with the criteria;

(4) Provide guidelines and regulations for Federal agencies, as authorized by law, on the acquisition, maintenance, and disposition of information technology;

(5) Develop policies and guidelines that facilitate the sharing of information technology among agencies as requried by this Circular;

(6) Review agencies' information resources management activities to meet the objectives of the triennial reviews required by the Paperwork Reduction Act and report the results to the Director, OMB;

(7) Manage the Automatic Data Processing Fund and the Federal Telecommunications Fund in accordance with the Federal Property and Administrative Services Act, as amended;

(8) Establish procedures for approval, implementation, and dissemination of Federal telecommunications standards and guidelines and for implementation of Federal Information Processing Standards.

f. *Office of Personnel Management.* The Director, Office of Personnel Management, shall:

(1) Develop and conduct training programs for Federal personnel on information resources management, including end user computing;

(2) Evaluate periodically future personnel management and staffing requirements for Federal information resources management;

(3) Establish personnel security policies and develop training programs for Federal personnel associated with the design, operation, or maintenance of information systems.

g. *National Archives and Records Administration.* The Archivist of the United States shall:

(1) Administer the Federal records management program in accordance with the National Archives and Records Act;

(2) Assist the Director, OMB, in developing standards and guidelines relating to the records management program.

h. *Office of Management and Budget.* The Director of the Office of Management and Budget shall:

(1) Provide overall leadership and coordination of Federal information resources management within the executive branch;

(2) Serve as the President's principal adviser on procurement and management of Federal telecommunications systems, and develop and establish policies for procurement and management of such systems;

(3) Issue policies, procedures, and guidelines to assist agencies in achieving integrated, effective, and efficient information resources management;

(4) Initiate and review proposals for changes in legislation, regulations, and agency procedures to improve Federal information resources management;

(5) Review and approve or disapprove agency proposals for collection of information from the public, as defined in 5 CFR 1320.7;

(6) Develop and publish annually, in consultation with the Administrator of General Services, a five-year plan for meeting the information technology needs of the Federal government;

(7) Evaluate agencies' information resources management and identify cross-cutting information policy issues through the review of agency information programs, information collection budgets, information technology acquisition plans, fiscal budgets, and by other means;

(8) Provide policy oversight for the Federal records management function conducted by the National Archives and Records Administration and coordinate records management policies and programs with other information activities;

(9) Review, with the advice and assistance of the Administrator of General Services, selected agencies' information resources management activities to meet the objectives of the triennial reviews required by the Paperwork Reduction Act;

(10) Review agencies' policies, practices, and programs pertaining to the security, protection, sharing, and disclosure of information, in order to ensure compliance with the Privacy Act and related statutes;

(11) Resolve information technology procurement disputes between agencies and the General Services Administration pursuant to Section 111 of the Federal Property and Administrative Services Act;

(12) Review proposed U.S. government position and policy statements on international issues affecting Federal Government information activities and advise the Secretary of State as to their consistency with Federal information resources management policy.

10. *Oversight.* The Director, OMB, will use information technology planning reviews, fiscal budget reviews, information collection budget reviews, management reviews, GSA reviews of agency information resources management activities, and such other measures as he deems necessary to evaluate the adequacy and efficiency of each agency's information resources management and compliance with this Circular.

11. *Effective Date.* This Circular is effective upon publication (December 12, 1985).

12. *Inquiries.* All questions or inquiries should be addressed to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. Telephone: (202) 395-3287.

13. *Sunset Review Date.* This Circular shall have an independent policy review to ascertain its effectiveness three years from the date of issuance.

James C. Miller III,
Director.

Appendix I: Federal Agency Responsibilities for Maintaining Records about Individuals
Appendix II: Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities
Appendix III: Security of Federal Automated Information Systems
Appendix IV: Analysis of Key Sections

Darrell A. Johnson,
Assistant Director for Administration.

Appendix I to OMB Circular No. A-130—Federal Agency Responsibilities for Maintaining Records About Individuals

1. *Purpose and Scope.*

This Appendix describes agency responsibilities for implementing the Privacy Act of 1974, 5 U.S.C. 552a as amended (hereinafter "the Act"). It applies to all agencies subject to the Act. The Appendix constitutes a revision to procedures formerly contained in OMB Circular No. A-108, now rescinded. Note that this Appendix does *not* rescind other guidance OMB has issued to help agencies interpret the Privacy Act's provisions, e.g., Privacy Act Guidelines (40 FR 28948–28978, July 9, 1975), or Guidance for Conducting Matching Programs (47 FR 21656–21658, May 19, 1982).

2. *Definitions.*

a. The terms "agency," "individual," "maintain," "record," "system of records," and "routine use," as used in this Appendix, are defined in the Act (5 U.S.C. 552a(a)). The definition of "agency" in the Act differs somewhat from the definition in the Circular.

b. The term "minor change to a system of records" means a change that does not significantly change the system; that is, does not affect the character or purpose of the system and does not affect the ability of an individual to gain access to his or her record or to any information pertaining to him or her which is contained in the system; e.g., changing the title of the system manager.

3. *Assignment of Responsibilities.*

a. *All Federal Agencies.* In addition to meeting the agency requirements contained in the Act, and the specific reporting requirements detailed in this Appendix, the head of each agency shall ensure that the following reviews are conducted as often as specified below, and be prepared to report to the Director, OMB, the results of such reviews and the corrective action taken to resolve problems uncovered. The head of each agency shall:

(1) *Section (m) Contracts.* Review every two years a random sample of agency contracts that provide for the maintenance of a system of records on behalf of the agency to accomplish an agency function, in order to ensure that the wording of each contract makes the provisions of the Act apply. (5 U.S.C. 552a(m)(1))

(2) *Recordkeeping Practices.* Review annually agency recordkeeping and disposal policies and practices in order to assure compliance with the Act.

(3) *Routine Use Disclosures.* Review every three years the routine use disclosures associated with each system of records in order to ensure that the recipient's use of such records continues to be compatible with the purpose for which the disclosing agency originally collected the information. The first such review should commence immediately upon the issuance of this Appendix.

(4) *Exemption of Systems of Records.* Review every three years each system of records for which the agency has promulgated exemption rules pursuant to Section (j) or (k) of the Privacy Act in order to determine whether such exemption is still needed.

(5) *Matching Programs.* Review annually each ongoing matching program in which the agency has participated during the year, either as a source or as a matching agency, in order to ensure that the requirements of the Act, the OMB Matching Guidelines, and the OMB Model Control System and Checklist have been met.

(6) *Privacy Act Training.* Review annually agency training practices in order to ensure that all agency personnel are familiar with the requirements of the Act, with the agency's implementing regulation, and with any special requirements that their specific jobs entail.

(7) *Violations.* Review annually the actions of agency personnel that have resulted either in the agency being found civilly liable under Section (g) of the Act, or an employee being found criminally liable under the provisions of Section (i) of the Act, in order to determine the extent of the problem and to find the most effective way to prevent recurrences of the problem.

(8) *Systems of Records Notices.* Review annually each system of records notice to ensure that it accurately describes the system. Where minor changes are needed, ensure that an amended notice is published in the **Federal Register**. Agencies may choose to make one annual comprehensive publication consolidating such minor changes. This requirement is distinguished from and in addition to the requirement to report to OMB and the Congress major changes to systems of records and to publish those changes in the **Federal Register** (see paragraph 4b of this Appendix).

b. *Department of Commerce.* The Secretary of Commerce shall, consistent with guidelines issued by the Director, OMB, develop and issue standards and guidelines for assuring the security of information protected by the Privacy Act in automated information systems.

c. *General Services Administration.* The Administrator of General Services shall, consistent with guidelines issued by the Director, OMB, issue instructions on what agencies must do in order to comply with the requirements of Section (m) of the Act when contracting for the operation of a system of records to accomplish an agency purpose.

d. *Office of Personnel Management.* The Director of the Office of Personnel Management shall, consistent with guidelines issued by the Director, OMB:

(1) Develop and maintain government-wide standards and procedures for civilian personnel information processing and recordkeeping directives to assure conformance with the Act.

(2) Develop and conduct training programs for agency personnel, including both the conduct of courses in various substantive areas (e.g., legal, administrative, information technology) and the development of materials that agencies can use in their own courses. The assignment of this responsibility to OPM does not affect the responsibility of individual agency heads for developing and conducting training programs tailored to the specific needs of their own personnel.

e. *National Archives and Records Administration.* The Archivist of the United States shall, consistent with guidelines issued by the Director, OMB:

(1) Issue instructions on the format of the Agency notices and rules required to be published under the Act.

(2) Compile and publish annually the rules promulgated under 5 U.S.C. 552a(f) and agency notices published under 5 U.S.C. 552a(e)(4) in a form available to the public.

(3) Issue procedures governing the transfer of records to Federal Records Centers for storage, processing, and servicing pursuant to 44 U.S.C. 3103. For purposes of the Act, such records are considered to be maintained by the agency that deposited them. The Archivist may disclose deposited records only according to the access rules established by the agency that deposited them.

f. *Office of Management and Budget.* The Director of the Office of Management and Budget will:

(1) Issue guidelines and directives to the agencies to implement the Act.

(2) Assist the agencies, at their request, in implementing their Privacy Act programs.

(3) Review the new and altered system reports agencies submit pursuant to Section (o) of the Act.

(4) Compile the annual report of the President to the Congress in accordance with Section (p) of the Act.

4. *Reporting Requirements.*

a. *Privacy Act Annual Reports.* To provide the necessary information for the annual report of the President, agencies shall submit a Privacy Act Annual Report to the Director, OMB, covering their Privacy Act activities for the calendar year. The exact format and timing of the report will be established by the Director, OMB (5 U.S.C. 552a(p)); but, agencies should, at a minimum collect, and be prepared to report the following data on a calendar year basis:

(1) Total number of active systems of records and changes to that population during the year, e.g., publications of new systems, additions and deletions of routine uses, exemptions, automation of record systems.

(2) Public comments received on agency publications and implementation activities.

(3) Number of requests from individuals for access to records about themselves in systems of records *that cited the Privacy Act in support of their requests.*

(4) Number granted in whole or part, denied in whole, and for which no record was found.

(5) Number of amendment requests from individuals to amend records about them in systems of records *that cited the Privacy Act in support of their requests.*

(6) Number granted in whole or part, denied in whole, and for which no record was found.

(7) Number of appeals of access and amendment denials and the results of such appeals.

(8) Number of instances in which individuals litigated the results of appeals of access or amendment, and the results of such litigation.

(9) Number and description of matching programs participated in either as source or matching agency.

b. *New and Altered System Reports.* The Act requires agencies to publish notices in the **Federal Register** describing new or altered systems of records, and to submit reports on these systems to the Director, OMB, and to the Congress.

(1) *Altered System of Records.* Minor changes to systems of records need not be reported. For example, a change in the designation of the system manager due to a reorganization would not require a report, so long as an individual's ability to gain access to his or her records is not affected. Other examples include changing applicable safeguards as a result of a risk analysis, deleting a routine use when there is no longer a need for the authorized disclosure. These examples are not intended to be all-inclusive.

The following changes are those for which a report is required:

(a) An increase or change in the number or types of individuals on whom records are maintained. For example, a decision to expand a system that originally covered only residents of public housing in major cities to cover such residents nationwide would require a report. Increases attributable to normal growth should not be reported.

(b) A change that expands the types or categories of information maintained. For example, a personnel file that has been expanded to include medical records would require a report.

(c) A change that alters the purpose for which the information is used.

(d) A change to equipment configuration (either hardware or software) that creates substantially greater access to the records in the system. For example, locating interactive terminals at regional offices for accessing a system formerly accessible only at the headquarters would require a report.

(e) The addition of an exemption (pursuant to Section (j) or (k) of the Act). Note that, in submitting a rulemaking for an exemption as part of a report of a new or altered system, agencies will meet the reporting requirements of Executive Order No. 12291 and need not make a separate submission under that order.

When an agency makes a change to an information technology installation, telecommunication network, or any other general changes in information collection, processing, dissemination, or storage that affect multiple systems of records, it may submit a single consolidated new or altered system report, with changes to existing notices and supporting documentation included in the submission.

(2) *Contents of the Report.* The report for a new or altered system has three elements: a transmittal letter, a narrative statement, and supporting documentation that includes a copy of the proposed **Federal Register** notice. There is no prescribed format for either the letter or the narrative statement. The notice must appear in the format prescribed by the Office of the Federal Register's *Document Drafting Handbook.*

(a) *Transmittal Letter.* The transmittal letter shoud be signed by the senior agency official responsible for implementation of the Act within the agency and should contain the name and telephone number of the individual who can best answer questions about the system. The letter should contain the agency's assurance that the proposed system does not duplicate any existing agency systems. It should also state that a copy of the report has been distributed to the Speaker of the House and the President of the Senate as the Act requires. The letter may also include requests for waiver of the reporting time period.

(b) *Narrative Statement.* The narrative statement should be brief. It should make reference, as appropriate, to information in the supporting documentation rather than restating such information. The statement should:

(*1*) Describe the purpose for which the agency is establishing the system of records.

(*2*) Identify the authority under which the system is maintained. The agency should avoid citing housekeeping statutes, but rather cite the underlying programmatic authority for collecting, maintaining, and using the information. When the system is being operated to support an agency housekeeping program, e.g., a carpool locator, the agency may, however, cite a general housekeeping statute that authorizes the agency head to keep such records as are necessary.

(*3*) Provide the agency's evaluation of the probable or potential effects of the proposal on the privacy of individuals.

(*4*) Describe the relationship of the proposal, if any, to the other branches of the Federal Government and to State and local governments.

(*5*) Provide a brief description of the steps taken by the agency to minimize the risk of unauthorized access to the system of records. A more detailed assessment of the risks and specific administrative, technical, procedural, and physical safeguards established shall be made available to OMB upon request.

(*6*) Explain how each proposed routine use satisfies the compatibility requirement of subsection (a)(7) of the Act. For altered systems, this requirement pertains only to any newly proposed routine uses.

(*7*) Provide OMB control numbers, expiration dates, and titles of any OMB approved information collection requirements contained in the system of records. If the request for OMB clearance of an information collection is pending, the agency may simply state the title of the collection and the date it was submitted for OMB clearance.

(c) *Supporting Documentation.* Attach the following to all new or altered system reports:

(*1*) An advance copy of the new or altered system notice (consistent with the provisions of 5 U.S.C. 552a(e)(4)) that the agency proposes to publish for the new or altered system. For proposed altered systems the documentation should be in the same form as the agency proposes to publish in the public notice.

(*2*) An advance copy of any new rules or changes to published rules (consistent with the provision of 5 U.S.C. 552a (f), (j), and (k)) that the agency proposes to issue for the new or altered system. If no changes to existing rules are required, the agency shall so state in the narrative portion of the report. Proposed changes to existing rules shall be provided in the same form as the agency proposes to publish for formal notice and comment.

(3) *Timing and Distribution for Submitting New and Altered System Reports.* Submit reports on new and altered systems of records not later than 60 days prior to establishment of a new system or the implementation of an altered system (5 U.S.C. 552a(o)). Submit three copies of each report to:

President of the Senate, Washington, D.C. 20510

Speaker of the House of Representatives, Washington, D.C. 20515

Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

Agencies may assume that OMB concurs in Privacy Act aspects of their proposal if OMB has not commented within 60 days from the date the transmittal letter was signed. Agencies may publish system and routine use notices as well as exemption rules in the **Federal Register** at the same time that they send the new or altered system report to OMB and the Congress. The 60-day period for OMB and Congressional review and the 30-day notice and comment period for routine uses and exemptions will then run concurrently.

(4) *Waivers of Report Time Period.* The Director, OMB, may grant a waiver of the 60-day period if the agency asks for the waiver and can demonstrate compelling reasons. Agencies may assume that OMB concurs in their request if OMB has not commented within 30 days of the date the transmittal letter was signed. When a waiver is granted, the agency is not thereby relieved of any other responsibility or liability under the Act. Note that OMB cannot waive time periods specifically established by the Act. Agencies will still have to meet the statutory notice and comment periods required for establishing a routine use or claiming an exemption.

Appendix II to OMB Circular No. A-130—Cost Accounting, Cost Recovery, and Interagency Sharing of Information Technology Facilities

1. *Purpose.*

This Appendix establishes procedures for cost accounting, cost recovery, and interagency sharing of Federal information technology facilities. The Appendix revises procedures formerly contained in OMB Circular No. A-121, now rescinded.

2. *Applicability.*

This Appendix applies to all information technology facilities that are operated by or on behalf of a Federal agency; provide information technology service to more than one user; operate one or more general management computers; and have obligations in excess of $3 million per year.

3. *Definitions.*

a. The term "information technology facility" means an organizationally defined set of personnel, hardware, software, and physical facilities, a primary function of which is the operation of information technology. An information technology facility includes:

(1) The personnel who operate computers or telecommunications systems; develop or maintain software; provide user liaison and training; schedule computers, prepare and control input data; control, reproduce, and distribute output data; maintain tape and disk libraries; provide security, maintenance, and custodial services; and directly manage or provide direct administrative support to personnel engaged in these activities.

(2) The owned or leased computer and telecommunications hardware, including central processing units; associated peripheral equipment such as disk drives, tape drives, drum storage, printers, card readers, and consoles; data entry equipment; data reproduction, decollation, booking, and binding equipment; telecommunications equipment including control units, terminals, modems, and dedicated telephone and satellite links provided by the facility to enable data transfer and access to users. Hardware acquired and maintained by users of the facility is excluded.

(3) The software, including operating system software, utilities, sorts, language processors, access methods, data base processors, and other similar multi-user software required by the facility for support of the facility and/or for general use by users of the facility. All software acquired or maintained by users of the facility is excluded.

(4) The physical facilities, including computer rooms; tape and disk libraries; stockrooms and warehouse space; office space; physical fixtures.

b. The term "full costs" means all significant expenses incurred in the operation of an information technology facility. The following elements are included:

(1) Personnel, including salaries, overtime, and fringe benefits of civilian and military personnel; training; and travel.

(2) Equipment, including depreciation for owned, capitalized equipment; equipment rental or lease; and direct expenses for noncapitalized equipment.

(3) Software, including depreciation for capitalized costs of developing, converting, or acquiring software; rental of for software; and direct expenses for noncapitalized acquisition of software.

(4) Supplies, including office supplies; data processing materials; and miscellaneous expenses.

(5) Contracted services, including technical and consulting services; equipment maintenance; data entry support; operations support; facilities management; maintenance of software; and telecommunications network services.

(6) Space occupancy, including rental and lease of buildings, general office furniture, and equipment; building maintenance; heating, air conditioning and other utilities; telephone services; power conditioning and distribution equipment and alternate power sources; and building security and custodial services.

(7) Intra-agency services, including normal agency support services that are paid by the installation.

(8) Interagency services, including services provided by other agencies and departments that are paid by the installation.

c. The term "user" means an organizational or programmatic entity that receives service from an information technology facility. A user may be either internal or external to the agency organization responsible for the facility, but normally does not report either to the manager or director of the facility or to the same immediate supervisor.

d. The term "general management computer" means a digital computer that is used for any purpose other than as a part of a process control system, space system, mobile system, or a system meeting one of the exclusions identified in the Department of Defense Authorization Act of 1982.

4. *Accounting and Reimbursement for Sharing of Information Technology Facilities.*

a. *Interagency Sharing.* Agencies shall:

(1) Share their information technology facilities with users from other agencies to the maximum extent feasible;

(2) Document sharing arrangements, where the total annual reimbursement exceeds $500,000, with individual written agreements that identify:

(a) Services available for sharing;

(b) Service priority procedures and terms (e.g., quality performance standards) to be provided to each user;

(c) Prices to be charged for providing services;

(d) Reimbursement arrangements for services provided; and

(e) Arrangements for terminating the sharing agreement;

(3) Provide standard terms and conditions to users obtaining similar services insofar as possible;

(4) Include such sharing arrangements, when fully documented and part of a formal sharing program, in justifications to OMB for resource requests (see OMB Circular No. A-11, revised) and allocations. Direct funding by a shared facility should be requested only where exceptional circumstances preclude the user agency from using alternative sources.

b. *Cost Accounting.* Agencies shall account for the full cost of the operation of information technology facilities.

c. *User Cost Distribution System.* Agencies shall implement a system to distribute the full cost of providing services to all users. That system will:

(1) Be consistent with guidance provided in the Federal Information Processing Standards Publication No. 96, "Guidelines for Developing and Implementing a Charging System for Data Processing Services" (National Bureau of Standards, Department of Commerce, 1982).

(2) Price each service provided by the facility to the users of that service on an equitable basis commensurate with the amount of resources required to provide that service and the priority of service provided. The price of individual transactions may be estimated provided that they are periodically reconciled to assure that the full costs of operations are equitably distributed among all users.

(3) Directly distribute to the recipient of the services the full costs of dedicated services, including applications developed and maintained; software unique to a single application; and telecommunications equipment, including control units, terminals, modems, and dedicated telephone or satellite links provided by the facility to enable data transfer and computer access to users.

d. *Cost Recovery.* Consistent with statutory authority, agencies shall:

(1) Submit periodic statements to all users of agency information technology facilities specifying the costs of services provided;

(2) Recover full costs from Federal users of the facility; and

(3) Recover costs from nonfederal users of the facilities consistent with OMB Circular No. A-25.

e. *Accounting for Reimbursements Received.* Agencies shall:

(1) Include resource requests for the amount of planned information technology use in user budget and appropriation requests;

(2) Assure that shared facilities reduce budget and appropriation requests by the amount of planned reimbursements from users;

(3) Prepare, at the close of each fiscal year, a report that documents in the agency's official records the full past year cost of operating information technology facilities that recover more than $500,000 per year from sharing reimbursements; and

(4) Use the portion of reimbursements arising from equipment and software depreciation for the replacement of equipment and software capital assets, provided such usage is included in the agency's budget.

5. *Selection of Information Technology Facilities To Support New Applications.*

In selecting information technology facilities to support new applications, agencies shall establish a management control procedure for determining which facility will be used to support each significant application. This procedure shall ensure that:

(a) All alternative facilities are considered, including other Federal agency and nonfederal facilities and services;

(b) Agency rules do not require that priority be given to the use of in-house facilities; and

(c) The user of the application has primary responsibility for selecting the facility.

6. *Assignment of Responsibilities.*

a. *All Federal Agencies.* The head of each agency shall:

(1) Establish policies and procedures and assign responsibilities to implement the requirements of this Appendix; and

(2) Ensure that contracts awarded for the operation of information technology facilities include provisions for compliance with the requirements of this Appendix.

b. *General Services Administration.* The Administrator of General Services shall:

(1) Ensure that information technology facilities designated as Federal Data Processing Centers comply with the procedures established by this Appendix;

(2) Ensure that provisions consistent with this Appendix are included in contracts for the operation of information technology facilities when acquiring services on behalf of an agency.

7. *Implementation Requirements.*

Agencies shall implement the provisions of this Appendix effective at the beginning of fiscal year 1987.

Appendix III to OMB Circular No. A-130—Security of Federal Automated Information Systems

1. *Purpose.*

This Appendix establishes a minimum set of controls to be included in Federal automated information systems security programs; assigns responsibilities for the security of agency automated information systems; and clarifies the relationship between such agency security programs and internal control systems established in accordance with OMB Circular No. A-123, Internal Control Systems. The Appendix revises procedures formerly contained in Transmittal Memorandum No. 1 to OMB Circular No. A-71, now rescinded, and incorporates responsibilities from applicable national security directives.

2. *Definitions.*

a. The term "automated information system" means an information system (defined in Section 6d of the Circular) that is automated.

b. The term "information technology installation" means one or more computer or office automation systems including related telecommunications, peripheral and storage units, central processing units, and operating and support system software. Information technology installations may range from information technology facilities such as large centralized computer centers to individual stand-alone microprocessors such as personal computers.

c. The term "sensitive data" means data that require protection due to the risk and magnitude of loss or harm that could result from inadvertent or deliberate disclosure, alteration, or destruction of the data. The term includes data whose improper use or disclosure could adversely affect the ability of an agency to accomplish its mission, proprietary data, records about individuals requiring protection under the Privacy Act, and data not releasable under the Freedom of Information Act.

d. The term "sensitive application" means an application of information technology that requires protection because it processes sensitive data, or because of the risk and magnitude of loss or harm that could result from improper operation or deliberate manipulation of the application.

e. The term "security specifications" means a detailed description of the safeguards required to protect a sensitive application.

3. *Automated Information Systems Security Programs.*

Agencies shall assure an adequate level of security for all agency automated information systems, whether maintained in-house or commercially. Specifically, agencies shall:

—Assure that automated information systems operate effectively and accurately;

—Assure that there are appropriate technical, personnel, administrative, environmental, and telecommunications safeguards in automated information systems; and

—Assure the continuity of operation of automated information systems that support critical agency functions.

Agencies shall implement and maintain an automated information systems security program, including the preparation of policies, standards, and procedures. This program will be consistent with government-wide policies, procedures, and standards issued by the Office of Management and Budget, the Department of Commerce, the Department of Defense, the General Services Administration, and the Office of Personnel Management. Agency programs shall incorporate additional requirements for securing national security information in accordance with appropriate national security directives. Agency programs shall, at a minimum, include four primary elements: applications security, personnel security, information technology installation security, and security awareness and training.

a. *Applications Security.*

(1) *Management Control Process and Sensitivity Evaluation.* Agencies shall establish a management control process to assure that appropriate administrative, physical, and technical safeguards are incorporated into all new applications, and into significant modifications to existing applications. Management officials who are the primary users of applications should evaluate the sensitivity of new or existing applications being substantially modified. For those applications considered sensitive, the management control process shall, at a minimum, include security specifications and design reviews and systems tests.

(a) *Security Specifications.* Agencies shall define and approve security requirements and specifications prior to acquiring or starting formal development of the applications. The results of risk analyses performed at the information technology installation where the applications will be processed should be taken into account when defining and approving security specifications for the applications. Other vulnerabilities of the applications, such as in telecommunications links, shall also be considered in defining security requirements. The views and recommendations of the information technology user organization, the information technology installation, and the individual responsible for security at the installation shall be considered prior to the approval of security specifications for the applications.

(b) *Design Reviews and System Tests.* Agencies shall conduct and approve design reviews and system tests, prior to placing the application into operation, to assure the proposed design meets the approved security specifications. The objective of the system tests should be to verify that required administrative, technical, and physical safeguards are operationally adequate. The results of the design reviews and systems tests shall be fully documented and maintained in the official agency records.

(c) *Certification.* Upon completion of the system tests, an agency official shall certify that the system meets all applicable Federal policies, regulations, and standards, and that the results of the tests demonstrate that the installed security safeguards are adequate for the application.

(2) *Periodic Review and Recertification.* Agencies shall conduct periodic audits or reviews of sensitive applications and recertify the adequacy of security safeguards. Audits or reviews shall evaluate the adequacy of implemented safeguards, assure they are functioning properly, identify vulnerabilities that could heighten threats to sensitive data or valuable resources, and assist with the implementation of new safeguards where required. They are intended to provide a basis for recertification of the security of the application. Recertification shall be fully documented and maintained in the official agency records. Audits or reviews and recertifications shall be performed at least every three years. They should be considered as part of agency vulnerability assessments and internal control reviews conducted in accordance with OMB Circular No. A-123. Security or other control weaknesses identified shall be included in the annual internal control assurance letter and report required by Circular No. A-123.

(3) *Contingency Plans.* Agencies shall establish policies and assign responsibilities to assure that appropriate contingency plans are developed and maintained by end users of information technology applications. The intent of such plans is to assure that users can continue to perform essential functions in the event their information technology support is interrupted. Such plans should be consistent with disaster recovery and continuity of operations plans maintained by the installation at which the application is processed.

b. *Personnel Security.* Agencies shall establish and manage personnel security policies and procedures to assure an adequate level of security for Federal automated information systems. Such policies and procedures shall include requirements for screening all individuals participating in the design, development, operation, or maintenance of sensitive applications as well as those having access to sensitive data. The level of screening required by these policies should vary from minimal checks to full background investigations, depending upon the sensitivity of the information to be handled and the risk and magnitude of loss or harm that could be caused by the individual. These policies shall be established for both Federal and contractor personnel. Personnel security policies for Federal employees shall be consistent with policies issued by the Office of Personnel Management.

c. *Information Technology Installation Security.* Agencies shall assure that an appropriate level of security is maintained at all information technology installations operated by or on behalf of the Federal Government (e.g., government-owned, contractor-operated installations).

(1) *Assigning Responsibility.* Agencies shall assign responsibility for the security of each installation to a management official knowledgeable in information technology and security matters.

(2) *Periodic Risk Analysis.* Agencies shall establish and maintain a program for the conduct of periodic risk analyses at each installation to ensure that appropriate, cost effective safeguards are incorporated into existing and new installations. The objective of a risk analysis is to provide a measure of the relative vulnerabilities and threats to an installation so that security resources can be effectively distributed to minimize potential loss. Risk analyses may vary from an informal review of a microcomputer installation to a formal, fully quantified risk analysis of a large scale computer system. The results of these analyses should be documented and taken into consideration by management officials when certifying sensitive applications processed at the installation. Such analyses should also be consulted during the evaluation of general controls over the management of information technology installations conducted in accordance with OMB Circular No. A-123. A risk analysis shall be performed:

(a) Prior to the approval of design specifications for new installations;

(b) Whenever a significant change occurs to the installations (e.g., adding a local area network; changing from batch to online processing; adding dial-up capability). Agency criteria for defining significant change shall be commensurate with the sensitivity of the data processed by the installation.

(c) At periodic intervals established by the agency commensurate with the sensitivity of the data processed, but not to exceed every five years if no risk analysis has been performed during that period.

(3) *Disaster and Continuity Plan.* Agencies shall maintain disaster recovery and continuity of operations plans for all information technology installations. The objective of these plans should be to provide reasonable continuity of data processing support

should events occur that prevent normal operations at the installation. For large installations and installations that support essential agency functions, the plans should be fully documented and operationally tested periodically, at a frequency commensurate with the risk and magnitude of loss or harm that could result from disruption of information technology support.

(4) *Acquistion Specifications.* Agencies shall assure that appropriate technical, administrative, physical, and personnel security requirements are included in specifications for the acquisition or operation of information technology installations, equipment, software, and related services, whether procured by the agency or by GSA. These security requirements shall be reviewed and approved by the management official responsible for security at the installation making the acquisition.

d. *Security Awareness and Training Programs.* Agencies shall establish a security awareness and training program to assure that agency and contractor personnel involved in the management, operation, programming, maintenance, or use of information technology are aware of their security responsibilities and know how to fulfill them. Users of information technology systems should be apprised of the vulnerabilities of such systems and trained in techniques to enhance security.

4. *Assignment of Responsibilities.*

a. *Department of Commerce.* The Secretary of Commerce shall:

(1) Develop and issue standards and guidelines for assuring the security of Federal automated information systems;

(2) Establish standards, approved in accordance with applicable national security directives, for systems used to process sensitive information the loss of which could adversely affect the national security interest; and

(3) Provide technical assistance to Federal agencies in implementing Department of Commerce standards and guidelines.

b. *Department of Defense.* The Secretary of Defense shall:

(1) Act, in accordance with applicable national security directives, as executive agent of the government for the security of telecommunications and automated information systems that process information the loss of which could adversely affect the national security interest; and

(2) Provide technical material and assistance to Federal agencies concerning security of Federal telecommunications and automated information systems.

c. *General Services Administration.* The Administrator of General Services shall:

(1) Issue policies and regulations for the physical and environmental security of computer rooms in Federal buildings consistent with standards issued by the Department of Commerce and the Department of Defense.

(2) Assure, that agency procurement requests for computers, software, telecommunications services, and related services include security requirements. Delegations of procurement authority to agencies by GSA under mandatory programs, dollar threshold delegations, certification programs, or other so-called blanket delegations shall include requirements for agency specification of security requirements.

(3) Assure that information technology equipment, software, computer room construction, guard or custodial services, telecommunications services, and any other related services procured by GSA meet the security requirements established and specified by the user agency and are consistent with other applicable policies and standards issued by OMB, the Department of Commerce, the Department of Defense, and the Office of Personnel Management.

(4) Issue appropriate standards for the security of Federal telecommunications systems. Standards related to systems used to communicate sensitive information, the loss of which could adversely affect the national security interest, shall be developed and issued in accordance with applicable national security directives.

d. *Office of Personnel Management.* The Director, Office of Personnel Management, shall maintain personnel security policies for Federal personnel associated with the design, programming, operation, maintenance, or use of Federal automated information systems. Requirements for personnel checks imposed by these policies should vary commensurate with the risk and magnitude of loss or harm that could be caused by the individual. The checks may range from merely normal reemployment screening procedures to full background investigations.

5. *Reports.* In their annual internal control report to the President and the Congress, required under OMB Circular No. A-123, agencies shall:

a. Describe any security or other control weaknesses identifed during audits or reviews of sensitive applications or when conducting risk analyses of installations; and

b. Provide assurance that there is adequate security of agency automated information systems.

Appendix IV to OMB Circular No. A-130—Analysis of Key Sections

1. Purpose

The purpose of this Appendix is to provide a general context and explanation for the contents of the key sections of the Circular.

2. Background

The Paperwork Reduction Act of 1980, Pub. L. 96-511, 94 Stat 2812, codified at Chapter 35 of Title 44 of the United States Code, establishes a broad mandate for agencies to perform their information activities in an efficient, effective, and economical manner. Section 3504 of the Act provides authority to the Director, Office of Management and Budget (OMB), to develop and implement uniform and consistent information resources management policies; oversee the development and promote the use of information management principles, standards, and guidelines; evaluate agency information management practices in order to determine their adequacy and efficiency; and determine compliance of such practices with the policies, principles, standards, and guidelines promulgated by the Director.

The Circular implements OMB authority under the Act with respect to Section 3504(b), general information policy, Section 3504(e), records management, Section 3504(f), privacy, and Section 3504(g), Federal automatic data processing and telecommunications; the Privacy Act of 1974 (5 U.S.C. 552a); Sections 111 and 206 of the Federal Property and Administrative Services Act of 1949, as amended (40 U.S.C. 759 and 487, respectively); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et seq.); and Executive Order No. 12046 of March 27, 1978 and Executive Order No. 12472 of April 3, 1984, Assignment of National Security and Emergency Telecommunications Functions. The Circular complements 5 CFR Part 1320, Controlling Paperwork Burden on the Public, which implements other sections of the Paperwork Reduction Act dealing with controlling the reporting and recordkeeping burden placed on the public.

In addition, the Circular revises and consolidates policy and procedures in five existing OMB directives and rescinds those directives, as follows:

A-71—Responsibilities for the Administration and Management of Automatic Data Processing Activities

Transmittal Memorandum No. 1 to Circular No. A-71—Security of

Federal Automated Information Systems
A-90—Cooperating with State and Local Governments to Coordinate and Improve Information Systems
A-108—Responsibilities for the Maintenance of Records about Individuals by Federal Agencies
A-121—Cost Accounting, Cost Recovery, and Interagency Sharing of Data Processing Facilities.

OMB's review of the five existing policy directives led to the conclusion that much, but not all, of their content was procedural in nature, concerned chiefly with how policies were to be carried out. OMB determined that it was important clearly to distinguish the statement of policies from the procedures for implementing those policies. For this reason, the main body of the Circular consists of basic considerations and assumptions, policies, and assignments of responsibility; the appendices to the Circular consist of procedures for implementing various policies and with analysis of key sections.

OMB developed the main body of the Circular relying upon comments on the **Federal Register** notice as well as other forms of Federal agency and public input, principally meetings with interested parties. For the procedural revisions, OMB relied on the assistance of interagency task groups.

The revised contents of OMB Circular No. A-71, dealing with assignments of responsibilities, are in the main body of this Circular. The contents of OMB Circular No. A-90 are rescinded entirely, with the exception of a policy statement at Section 8(b)(17) of this Circular. Revisions of the procedural aspects of the other three policy directives—Transmittal Memorandum No. 1 to A-71, A-108, and A-121—are appendices to this Circular. Appendices I, II, and III have the same prescriptive force as the Circular; Appendix IV is an explanatory document.

On September 17, 1984, the President signed National Security Decision Directive (NSDD) No. 145, National Policy on Telecommunications and Automated Information Systems Security. The NSDD requires that the Director, OMB, review for consistency with the NSDD, and amend as appropriate, OMB Circular No. A-71, Transmittal Memorandum No. 1. The Circular and Appendix III satisfy the NSDD requirement.

3. Analysis

Section 6. Definitions.

f. Access to information. g. Dissemination of information. The Circular defines "access to information" as the function of providing to members of the public, upon their request, the government information to which they are entitled under law. Access refers to those situations in which the government agency's role is passive; access is what the government's responsibilities are when the public comes to the government and asks for information the government has and the public is entitled to. "Dissemination," in the Circular's usage, refers to the function of distributing government information; dissemination connotes an active outreach by a government agency. Dissemination refers to those situations in which the government provides the public with information without the public having to come and ask for it.

The distinction between access and dissemination is posed in order to elaborate the responsibilities of Federal agencies for providing information to the public. Two fundamentally different situations exist: one in which the public goes to the agency to ask for information the agency holds and may or may not have disseminated; and one in which the agency chooses to take the information it holds to the public. In the first instance—access—Congress has provided specific statutory policy in the Freedom of Information Act (FOIA) and in the Privacy Act. These laws and policies concerning access to government information are explicit, well known, and now so widely accepted in practice by Federal agencies as not to require policy elaboration in this Circular. Agencies should know that, if members of the public ask for information subject to FOIA or the Privacy Act, the agencies should normally provide the information forthwith, because the public has a formal legal process for forcing the agencies to yield the information.

The relationship between access to and dissemination of information is explained below, in the discussion of 8a(8) through (12).

Section 7. Basic Considerations and Assumptions

Basic considerations and assumptions are statements that provide the underpinnings for the prescriptive policies in Section 8; they are not themselves policy statements. They are either derived from statutes or legislative history, or represent executive branch management philosophy as embodied in the Circular.

—Statements 7–a through 7–d provide the general context for management of Federal information resources.
—Statement 7–e summarizes policy found in OMB Circular No. A–76, Performance of Commercial Activities.
—Statement 7–f states a general predisposition to use up-to-date information technology to manage Federal information resources.
—Statements 7-g and 7-h pertain to the Privacy Act and the Freedom of Information Act, respectively.
—Statement 7-i pertains to the National Science and Technology Policy, Organization and Priorities Act.
—Statement 7-j pertains to the Federal Records Act.
—Statement 7-k states a relationship between Federal information policy and international information policy.

Section 8. Policies

This section is divided into two subsections that generally correspond to the twofold definition of information resources management in Section 6-b, namely, information itself and the resources associated with information.

a. Information Management. The Paperwork Reduction Act acknowledges that information is a valuable resource and should be managed as such. Proceeding from this premise, this subsection states policies concerning the management of Federal information.

(1) and (2). Information Collection and Sharing. The Circular's basic considerations and assumptions (Section 7) establish the value of government information activities. Without question, some information created or collected by Federal agencies is so vital that the American form of government, the economy, national security, and citizens' safety and wellbeing could not continue to exist in its absence. Nothing in this Circular is intended to diminish or derogate the creation or collection of such information, nor to serve as a pretext under which a Federal agency could damage the Nation's critical needs by failing to create or collect such information.

At the same time, the Paperwork Reduction Act was designed to remedy deficiencies Congress perceived in Federal information activities. In the words of the report of the House Committee on Government Operations (Report No. 96–835, p. 3):

> The legislation is the result of a growing concern that the way the Government collects, uses, and disseminates information must be improved. Inefficiencies in current Federal information practices drastically reduce the effectiveness of the Government while, at the same time, drowning our

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citizens in a sea of forms, questionnaires, and reports.

The Act intends that the creation or collection of information be carried out within the context of efficient, effective, and economical management. When Federal agencies create or collect information—just as when they perform any other vital functions—they consume scarce resources and such activities must be continually scrutinized in light of good management principles. The applicable principles provided in the purposes of the Act are:

—To minimize the Federal paperwork burden for individuals, small businesses, State and local governments, and other persons;

—To minimize the cost to the Federal Government of collecting, maintaining, using and disseminating information; and

—To maximize the usefulness of information collected by the Federal Government. (44 U.S.C. 3501)

Agencies must justify the creation or collection of information in the light of their statutory functions. Policy statement 8a(9) uses the standard, "necessary for the proper performance of agency functions," taken directly from the Paperwork Reduction Act (44 U.S.C. 3504(c)(2)). Further, the policy statement includes the requirement that the information have practical utility, as defined in the Paperwork Reduction Act (44 U.S.C. 3502(15)) and elaborated in Controlling Paperwork Burdens on the Public (5 CFR Part 1320). Note that practical utility includes characteristics pertaining to the quality of information such as accuracy, adequacy, and reliability, and that, in the case of general purpose statistics or recordkeeping, practical utility means that actual uses can be demonstrated (5 CFR 1320.7 (q)).

Good management and the requirement of practical utility dictate that agencies must plan from the outset for the steps in the information life cycle. The Act also stipulates that agencies must "formulate plans for tabulating the information in a manner which will enhance its usefulness to other agencies and to the public" (44 U.S.C. 3507(a)(1)(C)). When creating or collecting information, agencies must plan how they will process and transmit the information, how they will use it, what provisions they will make for access to it, whether and how they will disseminate it, how they will store it, and finally, how the information will ultimately be disposed of. While agencies cannot at the outset achieve absolute certitude in planning for each of these processes, the requirement for information resources planning is clearly contained in the Act (44 U.S.C. 3506(c)(1)), and the absence of adequate planning is sufficient reason not to create or collect information in the first place.

Before creating or collecting new information, agencies should look first to other agencies and the private sector so as not to duplicate existing information sources or services that would satisfy their needs. The Act requires that agencies shall not conduct or sponsor information collections unless they have eliminated collections "which seek to obtain information available from another source within the Federal Government" (44 U.S.C. 3507(a)(1)(A)). Each agency must also "ensure its information systems do not overlap each other or duplicate the systems of other agencies" (44 U.S.C. 3506(c)(2)). The Act also contains provisions governing the sharing of information between agencies (44 U.S.C. 3510). Applying the policy of OMB Circular No. A-76, the Circular also requires agencies to examine the possibility of acquiring the necessary information from private sector sources.

This is not to say that information creation or collection functions should be indiscriminately turned over to other agencies or to the private sector, but rather to say that agencies have an obligation to examine other potential sources of information which may satisfy agency needs. Some information can only be created or collected by Federal agencies themselves in the exercise of the government's sovereign powers. For some information, the government can satisfy its legitimate needs only when a Federal agency is the creation or collection agent. But other information needs can be met, and in many cases are routinely met, through existing services and sources in other agencies or the private sector. In many cases there is no inherently governmental function that is served by having information collected by a Federal agency; agencies should and do consider acquiring information collection services from the private sector. The Circular emphasizes that these sources should always be looked to first in the interests of efficiency and economy.

(3) through (6). Privacy Act and Freedom of Information Act. These statements contain policy statements pertaining to the Privacy Act and incorporating the policies of OMB Circular No. A-108, which is rescinded and superseded. Agencies are to ensure that they meet the requirements of the Privacy Act regarding collection of individually identifiable information. Such information is to be maintained and protected so as to preclude intrusion into the privacy of individuals. Individuals must be accorded access and amendment rights to records, as provided in the Privacy Act. Appendix I prescribes procedures for the maintenance of records about individuals in accordance with the Privacy Act.

In addition to Privacy Act considerations, statements (3) and (4) include provisions concerning proprietary information. Agencies are to minimize their collection of proprietary information, consistent with legal requirements and operational necessity and, when such information must be collected, agencies must provide for its protection.

(7). Training. Agency personnel must receive proper training to safeguard information resources. Training is particularly important in view of the changing nature of information resources management. The development of end user computing and office automation, for example, place the management of information and information technology in the hands of nearly all agency personnel rather than in the hands of a few employees at centralized facilities such as large computer centers. Policies and procedures for computer security, records management, protection of privacy, and other safeguards need to be incorporated into information resources management training programs.

(8) through (12). Information Dissemination.

(8) and (9). General Policy. How does the public know what information is available from Federal agencies? That is, given the distinction the Circular makes between access and dissemination, what is the relationship between the two? How does the public know what government information is accessible? The answer is: through the government's dissemination of information on what is available and how to gain to access it.

The Freedom of Information Act requires each agency to publish currently in the **Federal Register**, for the guidance of the public, descriptions of agency organization; where and how the public may obtain information; the general course and methods by which agency functions are determined, including all procedural requirements; rules of procedure; descriptions of forms and how to obtain them; substantive regulations; statements of general policy; and revisions to all the foregoing (5 U.S.C. 552(a)(1)). The Privacy Act also requires publication of information concerning systems of records (see Appendix I); the Government in the Sunshine Act requires agencies to make public announcement of meetings (5 U.S.C. 552b(e)(1)). The Paperwork Reduction Act (44 U.S.C. 3507(a)(2)) and Controlling Paperwork Burdens on the Public (5 CFR Part 1320) require agencies to publish notices when they submit information collection requests for OMB approval.

In sum, every Federal agency has obligations to disseminate basic information to the public concerning what the agency does, how its programs operate, what the public must do to comply with laws or regulations, how to receive benefits, and how the public can use agency services. These obligations are the basic linkage between access to, and dissemination of, government information.

Beyond generic requirements, specific laws affect agency dissemination of information in two ways. First, for some agencies their basic enabling legislation stipulates that information dissemination is part of their statutory mission. General purpose statistical agencies, for example, have information dissemination as part of their very reason for existence. These agencies conduct substantial information dissemination programs in order to carry out their necessary functions. In contrast, other agencies such as some regulatory agencies have basic information access, but minimal information dissemination, responsibilities; the existence of substantial information dissemination programs in such agencies would be unusual. Second, statutes may sometimes require that agencies produce and disseminate specific information products or services. For example, the law may state that the President or head of an agency shall make reports to the Congress on given subjects; these would be legally required disseminations of information.

Beyond generic and specific statutory requirements, agencies have positive obligations to disseminate information as a necessary part of performing their functions. Each agency head must clarify the nature of these obligations for the agency's particular mission and set appropriate boundaries for dissemination functions. Before deciding to disseminate an information product or service, and periodically thereafter, an agency must be able to demonstrate that the dissemination of the product or service passes the test of either being required by law or being necessary for the proper performance of agency functions.

In conformity with the purposes of the Paperwork Reduction Act, the agency's positive obligations to disseminate information must be discharged within a responsible management framework of minimizing costs to the Federal Government while maximizing the usefulness of the information. Efficient, effective, and economical dissemination does not translate into diminishing or limiting the flow of information from the agency to the public. To the contrary, good management of information resources should result in more useful information flowing with greater facility to the public, at less cost to the taxpayer.

Given an adequate basis for dissemination, agencies must also ask themselves whether a proposed or existing information product or service substantially duplicates similar products or services that would otherwise be available, either from another agency or from the private sector. This requirement of non-duplication, originating in the Paperwork Reduction Act, husbands scarce resources and leads to more efficient, effective, and economical information dissemination by the government.

Similarly, the fact that an agency has created or collected information is not itself a valid reason for creating a program, product, or service to disseminate the information to the public. Agencies create and collect much information, often for purely internal governmental purposes, that is not intended for dissemination, for which there is no public demand, and the dissemination of which would serve no public purpose and would not be cost-justified; e.g., compilations of routine time and attendance records for Federal employees, or publication of the thousands of pages of common carrier tariff filings by regulatory agencies. While such information may be subject to access upon request under provisions of agency statutes, the Freedom of Information Act, or the Privacy Act, the agency must demonstrate in each case the need actively to disseminate such information. Over time, changes in laws, economic conditions, or information technology can result in changes in public demand, public purpose, or dissemination costs; for example, an agency's shift to electronic filing of reports, perhaps carried out primarily in order to improve internal information management, might generate a public demand for electronic dissemination that could be satisfied at minimal cost to the government and also improve the performance of the agency's information access function. The decision to disseminate information, however, entails potentially significant costs, must be addressed separately from the decision to create or collect information, and must hinge upon a determination that dissemination is necessary for proper performance of agency functions.

If agencies do contemplate disseminating particular information, they should plan for its dissemination when creating or collecting the information (see 8a(1)). Planning for dissemination should proceed from the Paperwork Reduction Act premises of minimizing the cost to the government while maximizing the usefulness of information. The focus of information dissemination plans should be on elevating to a policy level decisions regarding the agency's positive obligations to disseminate information and ensuring that the agency discharges the obligations in the most efficient, effective, and economical manner.

(10) Adequate Notice. Because many government information activities are important to the government and to the public, agencies must exercise care not to act capriciously with respect to information products and services. When agencies intend to commence offering new products or services, they should provide adequate advance notice so that the public may comment as to the need for the product or service. For example, if private sector interests believe they are already offering or are about to offer the same or a similar product or service—in which event the government may potentially be entering into unfair competition—such notice will allow these interests to present their case before the product or service is launched. By the same token, if many members of the public greatly depend on a particular product or service, they should be permitted to voice their views to an agency that is contemplating termination of the product or service.

The Circular refers to "significant" information products and services. It is not the Circular's intent that agencies should follow notice and comment procedures when terminating relatively inconsequential information products and services; examples might be minor brochures or flyers, products and services that were never intended to be continuing, or for which there is now little or no public audience. Agencies should determine for themselves whether information products and services are "significant," and in some cases may wish to establish procedures and threshold criteria for making such determinations. If a product or service is considered significant, as determined ultimately by the agency head, the agency may be well advised to follow notice and comment procedures prior to initiation or termination.

(11)(a). Reaching the Public: Avoiding Information Monopolies. When agencies have justified and made the basic decision to disseminate information, they must also satisfy conditions regarding the manner of dissemination. First, agencies must take steps to ensure that members of the public whom the agency has an obligation to reach have a reasonable ability to acquire the information. The audiences for information products and services will vary, and agencies should tailor the dissemination methods so as to place the information into the hands of those whom the agency intends to receive it.

Federal agencies are often the sole holders of certain information; hence, when they disseminate, they are sole suppliers and in a position of natural monopoly. When agencies use private sector contractors to accomplish dissemination, they must take care that they do not permit contractors to exercise monopolistic controls in ways that defeat the agencies' information dissemination obligations, for example, by setting unreasonably high prices. In some cases agencies may need to formulate contractual terms with a sole supplier contractor so that the contractor functions as a mere intermediary for the agency in dealing with end users in the public.

(11)(b). Reliance on the Private Sector. In disseminating information—as with other activities—agencies must act in the most cost effective manner, which includes maximum feasible reliance on the private sector. This is merely an application to agency information dissemination programs of the policy stated in OMB Circular No. A-76, Performance of Commercial Activities, and summarized in Section 7f of this Circular. It is "the general policy of the government to rely on commercial sources to supply the products and services the government needs," including products and services the government needs in order to disseminate information to the public. For example, before an agency establishes a service for electronic dissemination of government information via an online computer system, the agency should compare the cost of contracting for operation of the service versus in-house performance and determine whether in-house performance is less costly both for the government and for the public who will receive the service.

Policies contained in OMB Circular No. A-76 are applicable to information dissemination, including the policy that inherently governmental functions should be performed by government employees. The general policy of reliance on the private sector is balanced by the "inherent governmental function" policy, and the Circular in no way intends to abrogate the latter. Where agencies determine that information dissemination activities are inherently governmental, the agencies themselves should carry out the activities.

(11)(c). User Charges. The Federal Government is the sole possessor and supplier of certain types of information, which is frequently of substantial commerical value. Dissemination of such information, or its dissemination in a specific form or medium, may represent a government service from which identifiable recipients derive special benefits, in which case they may be subject to OMB Circular No. A-25, User Charges. For example, where the information is already substantially available in printed form, agencies may consider dissemination in electronic form to be a service of special benefit, the costs of which should be recovered through user charges. Many agencies do not have consistent, agency-wide policies and procedures for setting user charges for information products and services with a view to cost recovery. Agencies must establish user charges for the costs of information dissemination, and recover such costs, where appropriate. Whether user charges are appropriate depends, in principle, on whether identifiable recipients will receive special benefits from information products and services.

The requirement to establish user charges is not, however, intended to make the ability to pay the sole criterion for determining whether the public receives government information. Agencies must balance the requirement to establish user charges and the level of fees charged against other policies, specifically, the proper performance of agency functions and the need to ensure that information products and services reach the public for whom they are intended (see Section 8a(11)(a)). If an agency has a positive obligation to place a given product or service in the hands of certain specific groups or members of the public and also determines that user charges will constitute a significant barrier to discharging this obligation, the agency may have grounds for reducing or eliminating its user charges for the product or service, or for exempting some recipients from the charge.

(12). Periodic Review and Depository Libraries. Agencies must also establish procedures for periodically reviewing their information dissemination programs. Agency information dissemination plans must ask whether the agency should disseminate a given information product or service at all; if the agency is already disseminating the product or service, reviews should ask whether the agency should continue to do so; or whether the manner or medium of dissemination is the most efficient, effective, and economical.

In addition, agencies must establish procedures to ensure compliance with 44 U.S.C. 1902, which requires that government publications (defined in 44 U.S.C. 1901 and repeated in Section 6k of the Circular) be made available to the Federal depository libraries through the Government Printing Office. The depository libraries provide a kind of information "safety net" to the public, an existing institutional mechanism that guarantees a minimum level of availability of government information to all members of the public. Providing publications to the depository library program complies with the law and costs executive agencies virtually nothing.

b. Information Systems and Information Technology Management. This subsection states policies concerning the planning, acquisition, operation, and management of Federal information systems and technology. The Federal information systems and technology budget, which was $14 billion in FY 1985, is projected to increase at a rate faster than that of the overall Federal budget. With outlays at these levels and agencies becoming increasingly dependent upon information technology to accomplish their missions, it is essential that planning processes be applied to the acquisition and application of information technology.

(1). Planning. The Paperwork Reduction Act mandates a stronger central role in information resources planning. Specifically, the Act requires that OMB: (1) publish a five-year government-wide automatic data processing and telecommunications plan; (2) review and coordinate agency proposals for the acquisition and use of information technology; and (3) promote the use of the technology to improve governmental efficiency and effectiveness. In order to meet these objectives, it is necessary to initiate a government-wide process for developing and institutionalizing information technology planning that is based in agency programs and missions. The planning must also be tied to the budget so that budgetary decisions derive from plans, and conversely, so that budgetary constraints are reflected in the plans.

The process must further ensure that sufficient information is available to the central agencies to enable them to monitor compliance with Federal policies and identify major issues, including cross-cutting issues where more active centralized planning and management may be appropriate. Hence, agencies must institute information planning processes tied to both the conduct of programs and the preparation of the agency's budget.

(2) and (3). Management Controls and Accountability. Basic management controls for agency information systems are fundamental to sound information resources management. These controls should ensure the documentation and periodic review of major information systems, as well as periodic cost-benefit evaluation of overall information resources management in light of agency missions. In order to provide greater incentive for management efficiencies, accountability for information systems should be vested in the officials responsible for operating the programs that the systems support.

Program managers depend upon information systems to carry out their programs, and yet frequently they do not have direct control over the technical and operational support for those systems. Program managers often depend upon agency computer centers or contracted service organizations, the heads of which may not be directly accountable to the program managers in a formal organizational sense. Program managers are nonetheless responsible for conducting their programs and, to the extent successful conduct of the programs entails support from information systems, program managers must be held accountable for acquiring that support. The responsibilities of program managers are therefore presumed to include securing information systems support as needed, and planning for contingencies. Technical support organizations have a concomitant responsibility to meet their commitments, contractual or otherwise, to their program clients, but the program official has the ultimate responsibility for delivering a program's product or service.

(4) and (5). Sharing Information Processing Capacity. OMB Circular No. A-121, which is rescinded and superseded, required only that the holder of excess automatic data processing capacity share such capacity. Because the holder of excess capacity has little incentive to seek opportunities for sharing, however, the new policy requires both that the holder share capacity and that the agency seeking information processing capacity fulfill its needs from other agencies or the private sector, whenever possible, before acquiring the new capacity itself. The policy establishes an order of preference in meeting needs—look first to existing sources before acquiring new capacity—but is not intended to assert blindly that sharing or commercial sources are the sole considerations. Agencies must also consider whether existing sources are more cost effective and whether they in fact will meet agency specific needs. Procedural aspects of these policy statements are found in Appendix II.

(6) and (7). Life Cycle Costing; and Avoiding Duplication. Agencies frequently develop information technology incrementally, through a series of interim upgrades, without regard for longer term considerations such as the information systems' life cycle. As part of their planning, agencies need to consider the full information system life cycle when determining the cost of information technology. While competitive procurement is generally to be valued, its costs should be taken into account, including the cost to program effectiveness of unnecessarily lengthy procurement processes. Other conditions, such as the need for compatibility, may also be legitimate limitations on the competitive process. Similarly, agency planning should ensure that information systems are not unnecessarily duplicative of systems available elsewhere in government or from the private sector.

(8). Software Management. The prevailing agency practice of developing customized computer software is a source of inefficiency, as the General Accounting Office and others have noted. While some agency applications can only be satisfied with customized software, the tendency to prefer custom development is excessively costly in terms of initial development, continued maintenance, and eventual conversion to new technology, because it requires the agency to bear the full cost of developing and maintaining the software it uses. While recognizing that off-the-shelf software has pitfalls, such as uncertainty of continued maintenance, managers are generally to prefer acquiring generic, off-the-shelf software available from the private sector instead of developing their own.

(9). Necessary Compatibility. Agencies often acquire technology that is incapable of communicating with other systems with which the agencies need to communicate. Compatibility among information systems has consequently emerged as a significant information resources management problem. Agencies must acquire or develop information systems in a manner that enhances necessary compatibility. The qualifier "necessary" is used because compatibility is not an unrestricted goal; information systems need to be compatible with other systems only to the extent that they must communicate with those systems.

(10) through (13). Security. Security of information systems means both the protection of information while it is within the systems and also the assurance that the systems do exactly what they are supposed to do and nothing more. Information system security entails management controls to ensure the integrity of operations including such matters as proper access to the information in the systems and proper handling of input and output. In this sense, security of information systems is first and foremost a management issue and only secondly a technical problem of computer security.

The recent introduction of smaller and more powerful computer systems and new communications technology and transmission media, together with the greater involvement of end users in managing information resources, have increased the potential vulnerability of Federal information systems and hence the level of management concern. Protecting personal, proprietary, and other sensitive data from unauthorized access or misuse; detecting and preventing computer related fraud and abuse, and assuring continuity of operations of major information systems in the event of emergency related disruptions are increasingly serious policy issues. Policy previously found in Transmittal Memorandum No. 1 to OMB Circular No. A-71 is here revised; procedural aspects of the policy are in Appendix III to the Circular.

The General Accounting Office reported in its review of the first-year implementation of the Federal Managers Financial Integrity Act (FIA) that internal controls in automatic data processing systems received inadequate coverage in FIA evaluations. GAO noted that some agencies were uncertain of the relationship between (a) OMB Circular No. A-71, Transmittal Memorandum No. 1, Security of Federal Automated Information Systems, and (b) OMB Circular No. A-123, Internal Control Systems. The relationship between security of automated information systems and agency internal control reports is now stated clearly in Appendix III.

Appendix III provides a minimal set of requirements for the security of all

Federal automated information systems. The Appendix also requires agencies to incorporate additional requirements for the security of information classified for national security purposes, in accordance with appropriate national security directives.

(14) Standards. The National Bureau of Standards, Department of Commerce, develops and issues Federal Information Processing Standards. The National Communications System develops and the General Services Administration issues Federal Telecommunications Standards. Some standards are mandatory for Federal agencies, while others are voluntary. Agencies may waive the use of Federal standards under certain conditions and pursuant to certain procedures, which vary depending upon the individual standard. In general, OMB strongly recommends use of these standards government-wide. Such standards can contribute to overall government economy and efficiency by increasing compatibility in computer and telecommunications networks, improving the transportability of software, and enabling computer systems to be developed using components of different manufacturers. These advantages can result in reduced procurement costs for equipment and services, improved competition, and better utilization of staff training and skills. While government-wide standards can result in management efficiencies, agencies should be mindful that standards can also have the untoward effects of regulations, as noted in OMB Circular No. A-119. Agencies should continuously assess relative costs and benefits of standards and their effects upon the agency's accomplishment of its mission. Note also that national security directives prescribe standards for computer security.

(15) Avoiding Information Technology Monopolies. Many agencies operate one or more central information technology facilities to support agency programs. In these agencies, program managers are often required to use the central facilities. The manager of such a monopoly facility has a lesser incentive to control costs, since he or she has a captive clientele. The program manager has little leverage to ensure that information processing resources are efficiently allocated since he or she cannot seek, or can seek only with great difficulty, alternative sources of supply. When users are dependent on effective technology support to perform their functions, control over selection of facility is essential and consistent with holding users responsible for producing their government information products. To provide incentives conducive to more businesslike procedures in information technology facilities, agencies should avoid monopolistic information processing arrangements and should enter into them only if their cost effectiveness is clear and they are subject to periodic review. Appendix II specifies certain procedures with respect to this policy.

(16) Cost Recovery. This policy constitutes a revision to policy stated in OMB Circular No. A-121. Whereas Circular No. A-121 required only that costs for automatic data processing facilities be allocated to users, agencies must now recover the costs of information technology facilities from government users. Viable management of a large information technology facility requires that managers know the amount of resources devoted to each user when providing services. Furthermore, effective management of the use of information technology requires that the user have responsibility for and control over the resources consumed by use of the facility. Experience with Circular No. A-121 showed OMB that allocating costs had little effect on agencies' behavior; recovering costs means that actual transfers of funds will take place between suppliers and users of information technology facilities. Procedural aspects of the policy appear in Appendix II.

(17) Coordination with State and Local Governments. This policy reaffirms policy previously found in OMB Circular No. A-90, Transmittal Memorandum No. 1. The interagency group that worked on the revision of Circular No. A-90 recommended, and OMB agreed, that the Circular should be rescinded except for a single policy statement prohibiting Federal agencies from placing unnecessary restrictions on the information systems that State and local governments use to carry out federally financed program activities.

(18) Application of Up-to-date Information Technology. Recent availability of low cost, highly efficient and effective electronic information technology can greatly increase worker productivity and facilitate operation of Federal agency programs. The Circular states a predisposition, based in the Paperwork Reduction Act, in favor of applying such technology to the information life cycle within a responsible management context. Two broad areas of information technology merit further discussion: (1) electronic information collection and dissemination, and (2) end user computing.

—*Electronic Collection and Dissemination of Information.* Federal agencies are moving rapidly to provide for collection and dissemination of information through electronic media. In developing this Circular, OMB considered whether it was necessary to provide specific policies concerning electronic collection and dissemination of governmental information. OMB concluded that, except for the general predisposition in favor of applying new technological developments to information resources management, the policies that apply to information collection and dissemination in other media also apply to electronic collection and dissemination. It is important, however, that agencies recognize the necessity of systematically thinking through the application of policies stated elsewhere in this Circular to electronic collection and dissemination of information. For example, when developing electronic collection programs, agencies should give particular attention to issues such as privacy, public access, and records management. When developing electronic dissemination programs, agencies should ensure that access is provided to each class of users upon reasonable terms, avoid problems arising from monopolistic control, ensure maximum reliance upon the private sector, and take necessary steps for cost accounting and cost recovery.

—*End User Computing.* Federal agencies are also moving rapidly to acquire end user computing capabilities. OMB endorses the managed innovation approach to end user computing presented in GSA's publication Managing End User Computing in the Federal Government (June 1983). Because end user computing places management of information in the hands of individual agency personnel rather than in a central automatic data processing organization, the Circular requires that agencies train end users in their responsibilities for safeguarding information; Appendix III deals in part with the security of end user computing.

Section 9. Assignment of Responsibilities

This section assigns responsibilities for the management of Federal information resources addressed in this Circular. OMB Circular No. A-71 is rescinded and its contents are revised and incorporated into this section along with responsibilities assigned under the Paperwork Reduction Act; Section 111 of the Federal Property and Administrative Services Act, as amended; and Executive Order No. 12046. Certain assignments of responsibility from OMB to other agencies, as noted below, are also included. Following are principal noteworthy aspects of this section.

Responsibility for Managing Information Resources. Statement 8a(1) is a key element in the Circular because it establishes that the locus of responsibility for actual management of Federal information resources is the head of each agency. This means, for example, that the determination of what is "necessary for the proper performance of agency functions" with respect to information creation or collection (8a(1)) and information dissemination (8a(9)) lies with the head of the agency. In the Circular OMB sets the policy framework within which such determinations are to be made and the standards and provisions for reviewing the determinations, but the management decisions and their implementation belong properly with the agency holding the information resources.

Triennial Reviews. The Paperwork Reduction Act provides that the Director of OMB ". . . shall, with the advice and assistance of the Administrator of General Services, selectively review, at least once every three years, the information management activities of each agency to ascertain their adequacy and efficiency." (44 U.S.C. 3513) The Administrator of Information and Regulatory Affairs, OMB, and the Deputy Administrator of the General Services Administration, in an exchange of correspondence dated June 13 and July 22, 1983, concurred that GSA has the necessary statutory authority to conduct reviews of Federal agency information resources management activities. Separate triennial reviews of agency activities by OMB and GSA would be unnecessarily duplicative, which would not be consistent with the Act. Accordingly, the triennial reviews conducted by GSA will be designed to meet OMB's requirements under the Paperwork Reduction Act as well as GSA's own needs.

Senior Officials for Information Resources Management. In accordance with 44 U.S.C. 3506(b) and 5 CFR 1320.8, agencies are required to designate a senior official to carry out responsibilities under the Paperwork Reduction Act. The designation of the official is intended to assure clear accountability for setting policy for agency information resources management activities, provide for greater coordination among the agency's information activities, and ensure greater visibility of such activities within the agency. The responsibilities of the senior official for information resources management were identified in OMB Bulletin No. 81-21, which has expired. Those responsibilities are now estabished in this Circular.

International Information Policy. The Circular deals with the management of information resources held by the Federal government. While the creation, collection, processing, transmission, dissemination, use, storage, and disposition of information by the Federal government has international ramifications, Federal government information resources management policy is not the same as "U.S. information policy," which refers to U.S. national interests in the information field vis-a-vis the policies and interests of other nations. The Circular formally acknowledges this distinction and assigns responsibilities for international information policy only insofar as it relates to Federal government information resources management policy.

Timely Technology Procurement. Inherent in effective management of information technology is the ability of program managers to acquire technology in a timely manner. GSA is assigned the responsibility in Section 9 to develop criteria that will streamline procurement procedures and delegate procurement authority to agencies that comply with those procedures. All Federal agencies are directed in Section 9 to develop internal policies and procedures that further provide for timely acquisition of information technology.

Records Management. The Paperwork Reduction Act makes the management of Federal records an integral part of information resources management. While no new policies are embodied in this Circular, responsibilities have been assigned in order to ensure that agency records management programs are considered within the context of Federal information resources management.

Section 10. Oversight

The broad scope of the Circular dictates a strategy of focusing oversight on a series of aspects of information resources management rather than on a single comprehensive reporting scheme. OMB intends to use existing mechanisms, such as the fiscal budget, information collection budget, and management reviews, to examine agency compliance with the Circular. For example, during 1984 the management reviews for the FY 1986 budget year concentrated on five cross-cutting information issues: overall information resources management strategy, telecommunications, software management, "electronic filing," and end user computing. OMB issued data call bulletins requesting information specific to these issues, targeted the issues for special attention during the management reviews, and requested individual agencies to submit management improvement plans on specific aspects of the issues. Pursuit of this kind of selective oversight strategy permits OMB and the agencies the flexibility to shift the focus of oversight as information issues and the technological environment change.

[FR Doc. 85-30330 Filed 12-23-85; 8:45 am]

[**Editorial Note:** This reprint incorporates a correction that is published in the **Federal Register** of Monday, January 6, 1986.]

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OFFICE OF MANAGEMENT AND BUDGET

Advance Notice of Further Policy Development on Dissemination of Information

December 23, 1988.

SUMMARY: The Office of Management and Budget (OMB) solicits public comment in the development of policy concerning the dissemination of information by executive branch agencies. The proposed policy, which supplements guidance found in OMB Circular No. A–130 and incorporates OMB Circular No. A–3, covers selected aspects of information dissemination, including electronic dissemination of information.

DATE: Comments from the public should be submitted no later than March 6, 1989.

ADDRESS: Comments should be addressed to: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Room 3235, New Executive Office Building, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395–4814.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) has statutory responsibilities under the Paperwork Reduction Act, as amended, (44 U.S.C. Chapter 35): to establish government-wide policies that reduce the Federal paperwork burden; to enhance the appropriate application of information technology; to develop and implement uniform and consistent information resources management policies; and to oversee the development of information management principles, standards, and guidelines and to promote their use.

In the 1986 amendments to the Paperwork Reduction Act, Congress inserted the term "dissemination" at several places in the law, noting in the legislative history that dissemination is a key information management area not specified in the original Act but increasingly important in recent years. The report of the Senate Committee on Government Affairs stated:

> Management of the Federal Government's information resources includes all stages of information management and all types of information technology. * * * Such management also includes planning and organizing for the efficient and coordinated collection, and use and dissemination of information, and properly training employees to carry out such tasks. (Senate Committee on Governmental Affairs, Report on Federal Management Reorganization and Cost Control Act of 1986, 99th Congress, Report No. 99-347, July 31, 1986.)

In December 1985, OMB issued OMB Circular No. A–130, Management of Federal Information Resources (50 Federal Register 52730–52751, December 24, 1985), which provided a general policy framework for the management of Federal information resources. The Circular contained a number of policy statements concerning the collection and dissemination of information (see OMB Circular No. A–130, Section 8a, and Appendix IV, Section 3).

OMB further addressed information collection issues with the publication, on August 7, 1987, of a Notice of Policy Guidance on Electronic Collection of Information (52 Federal Register 29454–29457). OMB's summary of comments received is available at the address listed above.

In response to interest on the part of Congress, the agencies, and the public, OMB has determined that there is need for additional guidance regarding the collection and dissemination of information by Federal agencies. The present notice solicits public comment on development of proposed further information dissemination policy. This notice will be revised in the light of comments received and, incorporated into OMB Circular No. A–130.

In addition to requesting comment on the substance of the notice's Policy and Analysis of Policy, OMB solicits views on the following questions:

—Are the policy and accompanying analysis sufficiently comprehensive? Are there other major topics pertaining to information dissemination that should be treated?

—Is the procedural guidance provided sufficient to ensure enforcement of the policies? More broadly, how should OMB ensure enforcement of the policies?

Analysis of Policy

Management and Information Dissemination

Agencies manage the dissemination of information in the same sense that they manage any other legitimate agency function: they carry out policies and procedures to ensure that the function is discharged efficiently and effectively in accordance with applicable laws. An integral part of information dissemination management is ensuring that the agency applies modern information technology to the dissemination function.

As OMB Circular No. A-130, Appendix IV, points out, an agency's obligation to disseminate information must be discharged within a responsible management framework of minimizing costs while maximizing the usefulness of the information. Efficient, effective, and economical dissemination does not translate into diminishing or limiting the flow of information from the agency to the public. To the contrary, good management of information resources should result in more useful information flowing with greater facility to the public, at less cost to the taxpayer.

Incorporation of OMB Circular No. A-3

Section 1108 of Title 44 U.S.C. states in part:

> The head of an executive department, independent agency or establishment of the Government, with the approval of the Director of the Office of Management and Budget, may use from the appropriations available for printing and binding such sums as are necessary for the printing of journals, magazines, periodicals, and similar publications he certifies in writing to be necessary in the transaction of the public business required by law of the department, office, or establishment.

OMB Circular No. A-3, Government Publications, implements this provision by requiring that each agency maintain and implement an OMB approved publications control system, and prepare an annual report on periodicals and nonrecurring publications.

Because government publications are a form of information dissemination, and in order to integrate information policy as much as possible, OMB proposes to revise herewith Circular No. A-3, to incorporate the revised Circular into OMB Circular No. A-130, and to rescind Circular No. A-3. Whereas Circular No. A-3 covered only periodicals and nonrecurring publications, i.e., printed products, the proposed policy covers all information dissemination products—printed as well as electronic, with the sole exclusion of audiovisual products. Audiovisual products continue to be covered by OMB Circular No. A-114, Management of Federal Audiovisual Activities. Hence, the proposed policy applies to products such as periodicals and nonrecurring publications whatever their medium of dissemination, whether micrographics, machine-readable data files, software files, CD-ROMs (compact disks—read-only memory), electronic bulletin boards, or online information services.

The definitions of the terms "periodical" and "nonrecurring publication" have been incorporated from OMB Circular No. A-3, with some modifications.

—Circular No. A-3 defines these terms simply as publications issued by an agency; hence, it may include publications strictly internal to an agency. The definition in the proposed policy clarifies that the terms refer to documents disseminated or routinely made available to the public. OMB introduces this change because the focus of dissemination is on information distributed to the public, and because the concept of internal publication is difficult to define in practice.

—The definition of periodical in Circular A-3 excluded "primarily (90 percent or more) statistical materials." The proposed policy drops this exclusion; such materials would now be considered periodicals. The reason is that there is nothing intrinsic to primarily statistical materials that should cause them to be exempt from routine management controls. Historically, statistical materials were excluded with the intent of guarding against tampering with Federal statistics. OMB agrees that agencies must erect safeguards so that Federal statistics will not be tampered with. However, the safeguards ought not to mean omission of statistical publications, from routine management controls such as inventory and reporting.

Many agencies appear not to know what publications or databases they may be issuing, how decisions are made to disseminate information dissemination products, or how much they cost. The policy first requires management control systems, a requirement carried over from Circular No. A-3, and specifies some minimal functions the control systems are to perform. The purpose of the control systems is to ensure that sound management practices are followed in managing dissemination. If an agency's information dissemination responsibilities, as determined by the agency head within the context of the agency's mission and the OMB policy framework, call for an aggressive information dissemination outreach program, then the control system is a management tool for ensuring that the agency achieves and maintains such a program. Similarly, if the agency's information dissemination responsibilities are quite limited, the control system is a tool for ensuring that the agency continues to use public resources only for those activities necessary for the proper performance of agency functions.

One function of the control system is establishing and maintaining comprehensive inventories of the information dissemination products they disseminate. The rationale for requiring inventories is primarily that agenciescannot manage the dissemination function if they do not know what information products they have to disseminate, and that an inventory is an essential tool for managing the function. A corollary is that agencies can better serve their public information needs with current comprehensive inventories that can be used as finders' aids for locating information disseminated by the agencies.

OMB issues an annual bulletin instructing agencies to report on information dissemination products. Agencies should maintain the information sought in the annual OMB bulletin in their inventories. In addition, agencies should make use of their inventories for other management purposes. For example, agencies may wish to add keywords and abstracts in order to make the inventories more useful as finders' aids for locating information they disseminate. While agencies should be responsive to the public's requests for assistance in locating information, the agencies should bear in mind that private firms also provide government information locator services, and avoid offering information services that essentially duplicate services already available.

The proposed policy next states the general policy for periodicals that is based directly on 44 U.S.C. 1108, and is taken verbatim from OMB Circular No. A-3.

The proposed policy also continues the annual reporting and approval provisions found in OMB Circular No. A-3.

Adequate Notice

Circular No. A-130 states that "agencies shall disseminate significant new, or terminate significant existing, information dissemination products only after providing adequate notice to the public." (Section 8a) The Circular contained no procedural guidance for, nor any provisions for enforcing, the adequate notice policy. It left to the agencies the determinations as to what was a significant information dissemination product and what constitutes adequate notice. Nearly three years' experience with the Circular indicates that most agencies in fact have not made these determinations, nor have they established procedures for ensuring that adequate notice is given. During that period the public has brought to OMB's attention instances in which some form of advance public notice might reasonably have been expected under the policy, but no notice was given. Therefore, OMB is proposing additional guidance concerning adequate notice.

Significant information dissemination products. OMB's intent in Circular No. A-130 was that agencies would designate certain kinds of information dissemination products as significant, meaning that the decision to initiate, terminate, or substantially modify the content, form, or availability of such products should trigger a form of public notice in advance of actual initiation, termination, or modification. Other products deemed not to be significant require no advance notice.

Examples of nonsignificant products might be those that:

—From the outset, were *never intended to be continuing*; hence, most nonrecurring, one-time publications.

—Are *Generally considered ephemeral* such as brochures, handbills, flyers, pamphlets, and the like;

—Receive *Little expression of public interest* as evidenced by the lack of or decline in subscriptions, sales, or requests for copies.

Examples of significant products might be those that:

—are *required by law*; e.g., a statutorily mandated report to Congress;

—Involved expenditure of *substantial funds* for the dissemination; a dollar threshold might be appropriate here;

—By reason of the *nature of the information*, are matters of continuing public interest; e.g., a key economic indicator;

—By reason of the *timeliness of the information*, command public interest; e.g., monthly crop reports on the day of their release;

—Disseminate in a *new medium*; e.g., disseminating a printed product in electronic medium, or disseminating a machine-readable data file via online access;

—Have already received (or will receive) *substantial expression of public interest*; e.g., those that have (or can expect) regular followings or subscribers;

—May reasonably be viewed as *duplicating and/or competing with existing products* disseminated by other agencies or private sector firms; e.g., a value-added electronic database product.

Form of Notice. Similarly, agencies must determine what form a notice should take in a given case. Several forms of notice suggest themselves.

—*Oral public announcements* at meetings, conferences, and conventions attended by users or potential users of the product;

—*Written public announcements* in periodicals and other publications circulated to users or potential users;

—*Letters* to subscribers or potential subscribers;

—*Notices* with or without request for comment in the *Federal Register* or *Commerce Business Daily*; or

—*Public hearings* convened for the purpose of discussing initiation or termination.

These forms of notice involve different levels of effort and expense on the part of the agency, and agencies should choose a level proportional to the significance of the product and the action being proposed.

Determination of significance and adequate notice are matters of agency judgment. The key point is that agencies must make the judgments and act upon them. When initiating or terminating an information dissemination product, the agency has an obligation to assess and take account of the impact of its action upon the public. Where members of the public consider a proposed new agency product unnecessary and duplicative, the agency should find out, in advance of initiating the product, why they think this and whether the agency should reconsider a decision to initiate. Where members of the public consider an existing agency product important and necessary, the agency should find out, in advance of terminating or curtailing the product, why they think this and whether the agency should reconsider its decision.

Moreover, members of the public should be able to seek reconsideration or redress from agencies when they believe agencies have acted capriciously with respect to initiating or terminating information dissemination products. Agency procedures should include mechanisms for responding to the contingency that agency actions may violate the adequate notice policy, and for how the agency will rectify the violation.

In order to ensure that agencies in fact develop the necessary procedures, the proposed policy requires that agencies report the procedures to OMB.

Electronic Dissemination

The range of available information dissemination media expands as technology continues to develop. Yesterday's monthly index to scientific literature is today's online information service; yesterday's newsletter is today's electronic bulletin board; yesterday's magnetic tape is today's floppy disk or online database and tomorrow's CD-ROM. Part of managing the information dissemination function, therefore, is the responsibility to scrutinize regularly the media of dissemination in order to determine whether the medium in use continues to be the most appropriate.

The decision to disseminate information electronically in many respects is identical to the decision to disseminate information in any other medium. Agencies must ask themselves the questions:

—Is dissemination of this information dissemination product required by law?

—Is dissemination of this information dissemination product necessary for the proper performance of agency functions?

At the present time, electronic dissemination more often than not is an agency's secondary issuance of the product, the primary having been in some conventional paper format (press release, report, etc.). Where this is the case, electronic dissemination is more discretionary than the primary issuance, and agencies may wish to consider additional conditions before deciding for electronic dissemination. The policy statement lists conditions favorable to electronic dissemination.

While electronic products are more frequently the secondary mode of information dissemination, agencies must recognize that this condition is changing. Integration of information technology into the workplace is rapidly reaching the point that both internal agency processing and analysis of information as well as the public's use of information often occur primarily in electronic form. Supplying the information on paper is sometimes practically useless, particularly when the volume of information is large and computer search and retrieval capabilities are essential to efficient use. Moreover, the printed product is often a summary or aggregation of the larger body of information which, although useful in its own right, does not satisfy all legitimate user needs as well as the entire body of information in electronic medium. Under these conditions, an agency might reasonably conclude that dissemination in electronic medium is necessary for the proper performance of agency functions.

A basic purpose of the Paperwork Reduction Act is "to maximize the usefulness of information collected, maintained, and disseminated by the Federal Government." (44 U.S.C. 3501) Thus, dissemination in electronic media is often highly desirable because, under certain assumptions, the electronic information dissemination product is substantially more useful. Electronic information dissemination products tend to contain more information—often an exact and complete copy of a government electronic database, and to present the information in a format that is more manipulable by the user, and hence more conducive to tailoring to a wide variety of user needs. Agencies can frequently enhance the value of government information as a national resource and increase its usefulness by disseminating information in electronic media.

At the same time, it bears remembering that electronic dissemination is not applicable in all cases. Everyone in the public likely to be interested in the information may not be computer-literate or have access to information technology. Dissemination in the electronic media alone may render the information inaccessible to such users. Similarly, some government information holdings evoke little or no public interest and are not in demand, even when the public is well informed about what the holdings are. Absent statutory or mission mandates, any dissemination, let alone electronic, is of questionable utility in such cases.

As Circular No. A-130 notes, the fact that an agency has created or collected information is not itself a valid reason for creating a program, product, or service to disseminate the information to the public. By the same token, the fact that an agency is capable of offering an information service is not itself a valid reason for offering the service. Agencies should avoid offering dissemination services they know (or should know) to be available in the marketplace. An agency, for example, may have the capability to offer dial-up online access to its databases, but the same capability may also be available from private firms that purchase the agency's databases. For the agency to offer the service will always entail some cost to the government, and the availability of virtually identical services from private firms is a compelling argument against the need for the government to offer the service.

While electronic dissemination is generally desirable, agencies must observe certain boundaries on such activities. As a rule of thumb, Federal agencies should take it as a rebuttable presumption that they are to concentrate dissemination activities on supplying basic information, the provision of which is unique to the government, and to avoid offering value-added products to end users. That is, given a choice between expending resources on disseminating more government information in forms that are usable for general purposes and expending resources on tailoring fewer information dissemination products to specific user needs, agencies should presume they are to choose the former. In effect, agencies should prefer to "wholesale" government information and leave "retail," value-added functions to the private sector, especially when they know that the private sector is ready and able to perform the value-added functions. Indeed, the existence of a private sector, value-added provider is presumptive evidence that, barring extenuating circumstances such as urgent public policy considerations or distorted market forces, the Federal agency need not expend public funds to provide the value-added service.

For example, many agencies are currently planning to issue large databases on CD-ROMs, suitable for processing on microcomputers, and the question arises as to whether the agencies should include on the CD-ROMs the search-and-retrieval software necessary to access the databases. OMB's view is that the agencies should disseminate CD-ROMs that contain only the databases and should not include the software. The first reason for this view is that, as Circular No. A-130 has already noted and the General Accounting Office has frequently pointed out, the practice of developing and maintaining customized computer software is a source of inefficiency in Federal agencies. While the software may make the CD-ROMs more readily accessible by users, its development and maintenance also represent a costly diversion of agency resources, because software development by and large is not part of agencies' information dissemination mandates. The second reason is that the software development is a value-added feature that can be performed by the private sector, and hence a commercial activity that the government neither needs to nor should perform itself. Agencies might better devote their resources to improving the databases themselves or to preparing other databases for dissemination, for these are tasks that only the agencies can perform.

Circular No. A-130 counsels agencies, when using contractors for carrying out dissemination activities, to ensure that contractors are not permitted to exercise monopolistic controls over government information resources. By the same token, agencies themselves must avoid behaving in a monopolistic fashion with respect to their information dissemination products. For example, an agency that sells online access to its databases but refuses to sell copies of the databases themselves may be presumed to be behaving as a monopolist because its practice precludes the possibility of a competitor selling the same service at a lower price. If an agency is willing to provide public access to a database, the agency should be willing to sell copies of the database itself.

By the same reasoning, agencies should behave in an even-handed manner in disseminating information products. If an agency is willing to sell a database or database services to some members of the public, the agency should in principle be prepared to sell the same products under similar terms to other members of the public, absent a statutory basis for acting otherwise. While an agency may have public policy reasons for offering different terms of sale to different groups in the public, the agency should provide a clear statement as to its reasons and their basis.

User Charges

OMB Circular No. A-25, User Charges, (proposed revision published in 52 Federal Register 24890, July 1, 1987) implements Title 5 of the Independent Offices Appropriations Act of 1952 (31 U.S.C. 9701), establishing Federal policy regarding fees assessed for government services and for sale or use of government property or resources. The general policy stated in Circular No. A-25 (Section 6) is that a user charge will be assessed against each identifiable recipient for benefits derived from Federal activities beyond those received by the general public.

As Circular No. A-130 notes, the Federal Government possesses much information of substantial commercial value. Dissemination of such information, or its dissemination in a specific form or medium, may represent a government service from which identifiable recipients derive special benefits, in which case user charges may be applicable. Many agencies that have substantial information dissemination programs continue not to have consistent, agency-wide policies and procedures for setting user charges for information dissemination products. The proposed policy provides that agencies must establish user charges for the costs of disseminating these products, and recover such costs, where appropriate.

At present, Chapter 17 of Title 44, U.S. Code, reserves to the Public Printer and the Superintendent of Documents the pricing and sale of printed government documents. In practice, therefore, executive agency discretion in the setting of user charges for information dissemination products is limited to those that are not printed, i.e., principally to electronic products.

Circular No. A-130 stated that agencies shall recover only costs of disseminating information products through user charges, where appropriate, in accordance with Circular No. A-25. Circular No. A-130 also balanced the requirement to establish user charges against the need to ensure that government information dissemination products reach the public for whom they are intended. (Section 8a(11)(e)) "If an agency has a positive obligation to place a given product or service in the hands of certain specific groups or members of the public and also determines that user charges will constitute a significant barrier to discharging this obligation, the agency may have grounds for reducing or eliminating its user charges for the product or service, or for exempting some receipients from the charge" (Appendix IV). The Circular gave no further guidance as to how agencies should balance these requirements.

Circular No. A-25 also establishes that user charges should be set at a level sufficient to recover the full cost of providing the service, resource, or property. The proposed policy clarifies the application of Circular No. A-25 to information dissemination products. Absent statutory requirements to the contrary, the standard for user charges for information dissemination products should be to recover no more than the full cost of dissemination.

OMB's proposed revision to Circular No. A-25 makes a distinction (in Section 6a(2)(b)) between user charges when the Government is acting as property owner and when the Government is acting as sovereign. In the former case user charges will be based on market prices, and in the latter on full cost. For all instances in which the Government itself creates or collects information, or causes creation or collection through sponsorship, the Government is acting as sovereign. User charges the Government may assess for products resulting from such creation or collection should be no greater than the full cost of dissemination.

The proposed policy, therefore, treats information products as different from other goods and services with respect to user charges. First, statutes such as the Freedom of Information Act and the Government in the Sunshine Act establish that Federal agencies have a broad and general obligation to make government information available to the public and to avoid erecting barriers that impede public access. Circular No. A-130 continues this tradition with its Basic Considerations and Assumptions (Section 7), and with the policy balancing user charges against reaching the intended public. User charges higher than the cost of dissemination are a barrier to public access. Second, given that the Government has sunk the costs of creating and processing the information for governmental purposes, the economic benefit to society is maximized when the information is publicly disseminated at the cost of dissemination.

The full cost of dissemination may generally be thought of as the sum of all costs specifically associated with preparing for public dissemination and actually disseminating to the public. For example, an agency may prepare an information product for its own internal use, and costs associated with such production are not recoverable as user charges. When the agency takes the product, prepares it for public dissemination, and actually disseminates it, costs associated with preparation and actual dissemination are recoverable as user charges.

While the proposed policy generally limits user charges to the cost of dissemination, agencies should take care to set charges at the full cost of dissemination, where appropriate. Some agencies apparently limit user charges for information dissemination products, for example, to the costs of reproducing and distributing computer tapes without enunciating a rationale for such limitations. In fact, recoverable costs may be significantly higher. For example, for an online database service, recoverable cost elements might include personnel, materials, and services associated with the following: telecommunications between the computer system and user terminals; computer usage, online network management; training of personnel operating online services; preparation and distribution of manuals and training materials; and accounting and billing for online services. Cost elements might also include associated administrative overhead costs such as printing, postage, travel, and indirect costs.

In addition, OMB Circular No. A-25 provides for charges for government goods and services that convey special benefits to recipients beyond those accruing to the general public. Where agencies provide custom tailored information services to specific individuals or groups, full cost recovery for such services is appropriate. For example, if an agency prepares special tabulations or similar services from its databases in answer to a specific request from a member of the public, all costs associated with fulfilling the request would be charged, and the requester would be so informed before work was begun. In a few cases agencies engaging in information collection activities augment the information collection at the request of, and with funds provided by, private sector groups. Since the 1920s, the Bureau of the Census has carried out surveys of certain industries at greater frequency or at a greater level of detail than Federal funding would permit, because industry groups have requested more frequent or detailed government data and have paid the additional information collection and processing costs, and the additional information is consistent with Federal purposes. While results of these surveys are disseminated to the public at cost of dissemination, the existence and availability of the additional government data are special benefits to certain recipients beyond those accruing to the public. It is appropriate that these recipients should bear full costs of information collection and processing, as well as dissemination.

At the same time, as Circular No. A-130 points out, the requirement to establish user charges is not intended to make the ability to pay the sole criterion for determining whether the public receives government information. Agencies must balance the requirement to establish user charges and the level of fees charged against other policies, specifically, the proper performance of agency functions and the need to ensure that information dissemination products reach the public for whom they are intended (see OMB Circular No. A-130, section 8a(11)(e)). If an agency has a positive obligation to place a given product in the hands of certain specific groups or members of the public and also determines that user charges will constitute a significant barrier to discharging this obligation, the agency may have grounds for reducing or eliminating its user charges for the product, or for exempting some recipients from the charge. Such reductions or eliminations should be the subject of formal agency determinations on a case by case basis and justified in terms of clearcut agency policies.

Small Agencies

The foregoing discussion and proposed policy are written with a view to agencies that have sizable multimedia information dissemination programs. Not all agencies are large, nor have such programs. Formal management control systems, adequate notice procedures, and the administration of electronic information dissemination may be inappropriate for small agencies. The policies themselves, however, are appropriate for all agencies. Smaller agencies should implement the policies with procedures appropriate for their size.

James B. MacRae, Jr.,

Deputy Administrator for Information and Regulatory Affairs.

PROPOSED POLICY

1. *Definitions*

a. The term "periodical" means any publication disseminated or routinely made available to the public by an agency annually or more often with a format, content, and purpose consistent in nature. The term includes internal agency newsletters and annual reports. The term does not include:

—Memoranda, directives, regulations, legal opinions and decisions, proceedings, programs for cermonies, press releases, environmental impact statements and assessments, planning documents, and other purely administrative materials;

—Research and development reports that are the direct result of research contracts and are distributed to Federal Government employees and the contractor involved in the work, and technical books, monographs and journal articles that are published by commercial publishers and professional associations;

—Official instructional/informational documents of a permanent nature, published as a supplement to directive systems of executive branch agencies; and

—Annual update of instructional information publications made available to the public to inform them of laws and regulations and to assist them in complying with reporting requirements.

b. The term "nonrecurring publication" means any publication, including pamphlets, disseminated or routinely made available to the public by an agency on a one-edition basis, or less frequently than annually. The items not included in the term are the same as for the term periodical.

c. The term "information dissemination products" means periodicals, nonrecurring publications, machine-readable data files, software files, online database services, and electronic bulletin boards, issued or disseminated by agencies to the public; the term includes media such as magnetic tape and compact disks but does not include audiovisual activities covered by OMB Circular No. A-114. Dissemination to the public means distributing without restriction as to recipients and entails public announcement of distribution. Distribution restricted to government employees or to agency contractors or grantees is not considered dissemination to the public.

2. *Policy*

a. Agencies shall manage the dissemination of information so as to maximize efficient and effective performance of agency functions, maximize the usefulness of government information, and minimize the cost to the Federal Government.

b. Agencies shall maintain and implement a management control system for all information dissemination products. The management control system shall, at a minimum, perform the following functions:

(1) Monitoring and reviewing information dissemination products to assure that they are certified to be necessary for proper performance of agency functions, or, in the case of periodicals, necessary in the transaction of the public business required by law of the agency;

(2) Establishing and maintaining in electronic format a current and comprehensive inventory of all agency information dissemination products;

(3) Recording actual and proposed spending of funds for information dissemination products;

(4) Providing an annual report to the Director of the Office of Management and Budget according to specifications provided in annual reporting instructions; and

(5) Supporting such other functions as are necessary for effective and efficient management of information dissemination, such as developing aids to locating information disseminated by the agency.

c. Expenditure of funds shall be approved only for periodicals that provide information, the dissemination of which is necessary in the transaction of the public business required by law of the agency.

d. Agencies shall determine which of their existing and proposed information dissemination products are significant for purposes of providing adequate notice, and what constitutes adequate notice for significant information dissemination products; agencies shall disseminate these determinations to the public;

e. Agencies shall establish and implement procedures for providing adequate notice, in accordance with the preceding agency determinations, when initiating or terminating significant information dissemination products; procedures shall include how to determine what information dissemination products are significant, what constitutes adequate notice, and how the public may seek redress for agency violations.

f. Agencies should examine their information dissemination products to determine whether conditions favor the electronic dissemination of information. Conditions favorable to electronic dissemination include:

(1) The agency already maintains the information in electronic medium for its own purposes;

(2) The agency will not incur substantial new costs in disseminating the information electronically;

(3) Existing or potential users of the information have expressed a need for the information in electronic medium; e.g., a documented public demand;

(4) The agency can point to real benefits to the government and/or the public from disseminating the information electronically; e.g., more timely use of information, or the ability for users to manipulate the information in ways not available with other media;

(5) The agency has determined that information dissemination products already available to the public are not so similar that the agency's electronic dissemination would constitute unfair competition with the private sector.

g. Agencies should periodically review their information dissemination products to determine whether the medium of dissemination is appropriate to the product.

h. Agencies shall avoid disseminating information dissemination products that place the Government in unfair competition with the private sector;

i. Agencies shall give perference to disseminating basic electronic information dissemination products, and, absent compelling reasons, avoid disseminating value-added electronic information products;

j. Agencies shall establish consistent, agency-wide policies and procedures, including regulations as necessary, for setting and collecting user charges for information dissemination products.

b. Agencies shall set user charges for information dissemination products at a level sufficient to recover the full cost of dissemination, and exclude from calculation of the charges costs associated with collecting and processing the information. Exceptions to this policy are:

(i) Where statutory requirements are at variance with the policy;

(ii) Where the agency collects and processes, as well as disseminates, the information for the benefit of a specific identifiable group beyond the benefit to the general public; or

(iii) Where the agency has made a determination that user charges at full cost of dissemination constitute a significant barrier to properly performing the agency's functions and reaching the public whom the agency has an obligation to reach.

3. *Reporting*

a. Within 180 days of the effective date of this policy, the head of each agency shall submit to the Director, Office of Management and Budget:

(1) Copies of policies and procedures for the agency information dissemination management control systems; and

(2) Copies of agency procedures for providing adequate notice when initiating or terminating significant information dissemination products.

(3) Copies of agency policies and procedures for setting and collecting user charges for information dissemination products.

b. Unless otherwise individually directed by OMB, agencies with fewer than 1500 fulltime equivalent employees need only provide certification that the above policies are in effect and that the agency has provided the most recent annual report on information dissemination products.

4. *Approval*

OMB will respond to the agency's annual report on information dissemination products within 45 days of receipt. In its response, OMB will approve or disapprove the periodicals listed for new or continued use, or may request additional information on certain periodicals.

Although new periodicals should be proposed at the annual reporting time whenever possible, periodicals may also be presented to OMB for approval at other times of the year. OMB will respond to these supplemental requests within 45 days of receipt.

[FR Doc. 89-6 Filed 1-3-89; 8:45 am]

BILLING CODE 3110-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC-16720; 812-6820]

La Caisse centrale Desjardins du Quebec

December 28, 1988.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("1940 Act").

Applicant: La Caisse centrale Desjardins du Quebec.

Relevant 1940 Act Sections: Exemption requested under section 6(c) from all provisions of the 1940 Act.

Summary of Application: La Caisse centrale Desjardins du Quebec (the "Applicant") seeks an order to issue and sell commercial paper notes (the "Commercial Paper Notes") in the United States. In addition, the order would permit the Applicant to issue and sell debt securities other than Commercial Paper Notes ("Other Debt Securities") in the United States. The net proceeds of all offerings made in the United States by the Applicant will be utilized by the Applicant to carry out its function as financial agent for the Desjardins Group, which is a cooperative of savings and credit unions located in Quebec.

Filing Date: The application was filed on August 10, 1987 and amended on December 1, 1988.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m., on January 23, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the Applicant(s) with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. La Caisse centrale Desjardins de Quebec, 1, Complexe Desjardins, South Tower, Suite 2822, Montreal, Quebec H5B1B3.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney at (202) 272-3035 or Stephanie M. Monaco, Branch Chief at (202) 272-3030.

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. The Applicant is a corporation established by the Quebec Legislature to act as financial agent for the Desjardins Group (the "Group"). The Group is composed of approximately 1,345 savings and credit cooperatives known as caisses populaires and caisses d'economie (collectively the "Caisses") which are located throughout the Province of Quebec. Each Caisse is affiliated with one of eleven regional federations (the "Federations"). The Federations provide technical and financial services to their affiliated Caisses. The Federations together form a confederation, La Confederation des caisses populaire et d'economie Desjardins du Quebec (the "Confederation").

2. The Applicant, as financial agent of the Group, manages a liquidity fund for its members, provides its members with access to financial markets, and offers a range of financial services to large- and medium-size business corporations. Applicant makes loans to (i) members and affiliates of the Group and (ii) business corporations, governmental and paragovernmental entities whose credit needs exceed the capabilities of the individual Caisses. Applicant accepts deposits from the Desjardins Group, from governmental and paragovernmental entities, and from the short-, medium- and long-term Canadian and international capital markets.

3. The Applicant's operations are extensively regulated both by the act under which it was incorporated (the "Incorporating Act") and by other Quebec legislation which is similar to that applicable to Canadian chartered banks governed by the Bank Act (Canada) ("Chartered Banks"), including *inter alia* the Savings and Credit Unions Act of Quebec and the Quebec Deposit Insurance Act. The Caisses and the Federations are governed by the Credit Unions Act. The Confederation is governed by the Credit Unions Act and the Incorporating Act. Under the Quebec Deposit Insurance Act, deposits with the Caisses and with the Applicant are insured to a maximum of $60,000 (all figures contained herein are in Canadian dollars unless otherwise indicated) per depositor.

4. Applicant is subject to the supervision of the Inspector General of Financial Institutions of Quebec (the

federal register

Thursday
June 15, 1989

Part III

Office of Management and Budget

Second Advance Notice of Further Policy Development on Dissemination of Information

OFFICE OF MANAGEMENT AND BUDGET

Second Advance Notice of Further Policy Development on Dissemination of Information

June 8, 1989.

SUMMARY: The Office of Management and Budget (OMB) solicits further public comment in the development of policy concerning the dissemination of information by executive branch agencies. This notice summarizes public comments received to OMB's notice of January 4, 1989, regarding proposed changes to OMB Circular No. A-130, Management of Federal Information Resources; presents OMB reactions to the comments; states preliminary conclusions; and requests further comment. For the reasons indicated, the notice of January 4, 1989, is withdrawn.

DATE: Comments from the public should be submitted no later than August 14, 1989.

ADDRESS: Comments should be addressed to: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Room 3235 New Executive Office Building, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395-4814.

SUPPLEMENTARY INFORMATION: On January 4, 1989, the Office of Management and Budget (OMB) published for comment a notice (hereafter referred to as the January 1989 notice) entitled Advance Notice of Further Policy Development on Dissemination of Information (54 FR 214-220). OMB originally set the deadline for comments on the January 1989 notice as March 6, 1989. In response to many requests, OMB announced that the deadline was extended until April 10, 1989 (54 FR 12038, March 23, 1989).

OMB received 228 letters of comment on the January 1989 notice. Five percent of the letters were from Members of Congress; nine percent from Federal agencies; 10 percent from state and local government agencies; 66 percent from librarians; and 10 percent from private individuals or other nongovernmental organizations. The complete set of comments is available for inspection and copying in the docket reading room at the Office of Management and Budget, Room 3201 New Executive Office Building, 725 17th Street, NW., Washington, DC 20503. Persons desiring access to the comments may telephone (202) 395-6880 to arrange for entry to the building.

This second advance notice presents OMB's summary of comments on the January 1989 notice, OMB's reaction to the comments, and preliminary conclusions. The public is invited to comment further on the contents of this second advance notice.

Summary of Comments

General Comments

A majority of commentators expressed views concerning the overall contents and tone of OMB's January 1989 notice. The most common opinion was that the January 1989 notice and OMB Circular No. A-130 were heavily biased, concentrating so much on private sector prerogatives that OMB had failed to elaborate a positive role for Federal agencies in the dissemination of government information, even in situations where dissemination of such information was basic to agencies' missions. The most favorable comments on this general point concluded that a public/private sector sharing of responsibility for information dissemination is good public policy and good economics, but that the notice failed to capture any such positive theme.

Two other frequently expressed general comments were: that OMB should withdraw the January 1989 notice, lest Federal agencies begin to implement the notice as established policy; and that OMB should proceed no further with revisions to OMB Circular No. A-130 until Congress acted on the reauthorization of the Paperwork Reduction Act.

Another general comment was that the proposed policy, as well as OMB Circular No. A-130, is silent on the role of the States in information resources management policy. With respect to information dissemination policy, commentators noted that the States are both partners with the Federal Government in dissemination and a major users group for federally disseminated information.

OMB Reaction: OMB did not intend that either OMB Circular No. A-130 or the January 1989 notice should express bias in favor of private sector prerogatives in a manner that would denigrate the central role that Federal agencies' play in Federal information dissemination. Appendix IV of Circular A-130 analyzed generic and specific statutory requirements affecting agencies' information dissemination activities, as well as dissemination responsibilities arising from proper performance of agency functions as determined by heads of agencies. Because comments indicate that OMB's basic policy on these matters may not have been well communicated, OMB plans to review and revise the pertinent portions of OMB Circular No. A-130, namely Section 7, Basic Considerations and Assumptions, Section 8(a), Information Management, and corresponding sections of Appendix IV; and also to reconsider fully the content and tone of the January 1989 notice (see below).

As to the comment that OMB should withdraw the January 1989 notice, the form of that notice was neither a final policy nor a proposed policy, but an advance notice of proposed policy. That is, the notice was two steps from final policy, and therefore did not constitute either a statement of policy or even necessarily a statement of intended policy. Because comments indicated that the notice gave rise to substantial concern and some confusion among the public, OMB herewith withdraws the advance notice published January 4, 1989.

Other comments indicate that the objection was not to OMB's formulating policy on electronic dissemination. Commentators desired some policy on the subject, especially to help address the increasingly complex issues posed by changing technology, but in the opinion of many, not policy as they understood it. The Paperwork Reduction Act directs OMB to develop and implement uniform and consistent information resources management policies, so that undertaking further work on information dissemination policy is a responsibility under OMB's statutory mandate. OMB is mindful of congressional and public interest in this subject. OMB intends to continue work on developing information dissemination policy consistent with its mandate.

With respect to the role of the States, OMB agrees that the January 1989 notice and OMB Circular A-130 do not adequately treat the role of the States. In revising the Circular and the notice, OMB intends to work with State organizations to ensure that the role of the States is appropriately articulated.

Comprehensiveness and Enforcement

The January 1989 notice asked two general questions:

—Are the policy and accompanying analysis sufficiently comprehensive? Are there other major topics pertaining to information dissemination that should be treated?

—Is the procedural guidance provided sufficient to ensure enforcement of the policies? More broadly, how should OMB ensure enforcement of the policies?

Regarding the first question, some commentators answered in the affirmative, stating that the notice was thoughtful and coherent. Some stated that the analysis was generally sound but that the notice had a negative tone. Many others complained that the notice did little to illuminate how terms such as "value-added," "unfair competition," and "adequate notice" should be defined and used.

As to other major topics, many commentators pointed to the omission of any treatment of the Federal depository library program. Some commentators wanted a fuller discussion of how differences in information format or media affected various policy statements. Others wished for renewed discussion of the concepts of information access and information dissemination.

Regarding the question on procedural guidance, most who answered said that the notice did not provide sufficient guidance. They believed that the notice was no better than Circular No. A–130 with respect to enforcement and that both documents may be generally unenforceable.

Of the few who offered specific comments on procedural guidance for enforcement, their views fell into two groups. One group of commentators believed that OMB should take an affirmative role in approving or disapproving agency information dissemination products and evaluating private sector products, and that OMB should approve or disapprove agency dissemination plans or at least arbitrate disputes over such plans.

The other group of commentators believed that, while it should not micromanage, OMB should act to strengthen agency efforts at enforcement. Their suggestions included requiring public appeal mechanisms, or even making the policy into a regulation so that the public might seek relief through judicial or administrative proceedings.

OMB Reaction: OMB agrees that additional topics must be considered, as this notice elsewhere indicates. As to enforcement, OMB disagrees with the view that OMB should take a more active role of reviewing and approving or disapproving agencies' information dissemination programs. As Circular No. A–130 establishes in Section 9a (1), the locus of responsibility for actual management of Federal information resources is the head of each agency. In revising information dissemination policy, OMB plans to strengthen the policy framework of agency enforcement responsibilities.

Incorporation of OMB Circular No. A–3

The January 1989 notice proposed first to incorporate OMB Circular No. A–3, Government Publications, into OMB Circular No. A–130. The notice introduced certain changes to definitions in Circular No. A–3, and specified some functions that agency publications control systems are to perform, but proposed to leave the remainder of the contents of Circular No. A–3 unchanged.

The most common view expressed concerning the treatment of Circular No. A–3 was objection to the proposed elimination of the exclusion of statistical periodicals from the reporting requirements of the Circular. Commentators argued that the very rationale for reporting is management control by persons outside the statistical agencies, and therefore the change would open Federal statistics to real or apparent tampering, both of which must be guarded against.

As to the desirability of incorporating Circular No. A–3 into Circular No. A–130, most comments dealt with the effects of incorporation rather than arguing for or against it. Two Federal agencies objected to incorporation, arguing that the separate identity and visibility of Circular No. A–3 are important to effective publications management within the agencies.

In different ways, a number of commentators noted that incorporating Circular No. A–3 with only minor changes in definitions, inclusions, exclusions, and process would introduce new terms and policy formulations that appear different from and inconsistent with those found in Circular No. A–130; and that as a consequence it was not possible to join the two Circulars without substantial revision and harmonization of the two.

Several commentators pointed out that 44 U.S.C. 1108, the legal basis of Circular No. A–3, refers only to periodicals, and stated that OMB was extending its jurisdiction to other information products, especially electronic ones, without a statutory foundation.

Other commentators, particularly Federal agencies, focused on the contents of Circular No. A–3, pointing out that under the Paperwork Reduction Act OMB exercises detailed control over information collections and that similar control over information dissemination, as provided in Circular No. A–3, was excessive and unnecessary.

Commentators also objected to the inclusion of internal agency newsletters under the definition of periodical, since such publications are not intended for public distribution.

Commentators questioned why OMB did not include, under the definition of information dissemination products, audiovisual activities, which are covered by OMB Circular No. A–114. With reference to this term, some commentators questioned OMB's statutory authority for extending the definition to cover electronic information products.

OMB Reaction: Following are OMB reactions to comments on incorporation of OMB Circular No. A–3.

—OMB agrees that Federal statistical publications must be protected from both actual and apparent tampering, and that therefore the exclusion of statistical publications from management control reporting should not be dropped but should be continued; that is, the policy in existing Circular No. A–3 should be retained.

—OMB believes Circular No. A–3, or any revision thereto, should be incorporated into Circular No. A–130. The reason is that a basic purpose of the Paperwork Reduction Act is to coordinate, integrate, and make uniform Federal information policies and practices. (44 U.S.C. 3501) OMB views the joining of the two Circulars as a step toward coordination and integration of Federal information policy, and believes that the Paperwork Reduction Act and other authorities cited in Section 3 of Circular No. A–130 are adequate legal foundation for extending coverage to include information products other than periodicals.

—OMB agrees that 44 U.S.C. 1108 refers only to periodicals and is not a statutory basis for requiring reporting on electronic information products. However, the Paperwork Reduction Act and other authorities cited in Section 3 of Circular No. A–130 are an adequate basis for requiring such reporting.

—OMB believes that Circular No. A–3 should be incorporated into Circular No. A–130 only after substantial revision to Circular No. A–3.

—OMB agrees that audiovisual activities may logically belong under the definition of "information dissemination product," a logic that would also dictate the joining of OMB Circular Nos. A–114 and A–130. However, because agencies experienced administrative difficulties in extending reporting coverage to include electronic information products, OMB is

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inclined to defer until a later date the consideration of including audiovisual activities within the meaning of information dissemination product and joining the two Circulars.

—OMB believes any revision to the contents of Circular No. A–3 should reduce the exercise of OMB control over the details of agency information dissemination programs.

—OMB agrees that internal newsletters should not be included within the definition of the term periodical.

After further consideration, OMB proposes to take the following actions with respect to Circular No. A–3, actions which effectively incorporate suggestions made by commentators.

—Agencies will be required to maintain current comprehensive inventories of information dissemination products. However, the inventories will not be submitted to OMB and will not be individually examined on a routine basis by OMB. OMB plans to require that agencies annually submit their inventories to a single point, possibly the National Technical Information Service, for compilation and publication as a government-wide index for locating government information. OMB intends to establish an appropriate interagency group to determine the content of the inventory.

—OMB intends to reduce annual reporting to OMB to a single table of obligations data for agency information dissemination products (the equivalent of Exhibit 2 in OMB Bulletin No. 88–10, issued April 22, 1988) that would satisfy the requirements of 44 U.S.C. 1108. When submitting the table, agency heads will be required to certify that:

(a) The agency's information dissemination products are necessary for the proper performance of agency functions (to satisfy 44 U.S.C. 1108); and

(b) The agency has in place an effective management system for information dissemination products, including a current inventory.

—For FY 1990, OMB plans to issue a bulletin within the next 60 days detailing proposed changes to OMB Circular No. A–3 and requesting the single table and certifications. OMB intends to write to agencies in response to the FY 1990 bulletin, indicating whether their responses are in conformity with 44 U.S.C. 1108. For subsequent years, OMB plans to incorporate reporting into the annual budget process.

Adequate Notice

The January 1989 notice proposed requiring agencies: (1) To make determinations as to which of their information dissemination products are significant and what would constitute adequate notice for initiating or terminating such products; and (2) to establish procedures for providing adequate notice. The analysis of policy provided examples of significant products and forms of notice.

Relatively fewer comments were received on this section of the notice than on others, and many of those were from Federal agencies. In general, whether in support of or critical of the adequate notice concept, commentators suggested that OMB give more specific guidance both on definitions and process. Some commentators addressed themselves to issues of timeliness, suggesting precise timeframes for agency notices or requesting more specific guidance on timeframes for different kinds of products. Some pointed out that advance notice was often precluded by the fact that decisions to terminate information dissemination products arose directly from the annual budget process and that budget decisions may not be published in advance. A number challenged OMB's characterization of significant and nonsignificant products. Some pointed out, for example, that in a decision to terminate a product because of low public interest, as evidenced by diminished demand, agencies should also take into account the product's usage by the depository libraries.

OMB Reaction: OMB's intent in the January 1989 notice was to reinforce the concept of adequate notice by providing lengthy examples concerning adequate notice, but then to propose that agencies develop their own procedures in accord with their own circumstances.

OMB does not believe it should fix timeliness and other procedural issues more precisely, believing that these are matters better left to the agencies because the agencies are in the best position to take into account agency missions and the nature of the information dissemination products in question. OMB expects to require that agencies establish procedures consistent with general guidelines, but will leave detailed procedural specifications to the agencies.

OMB agrees that, in formulating procedures for adequate notice, agencies should take into account the fullest available information, such as depository library usage of information dissemination products. OMB recognizes that budget decisions may affect an agency's ability to provide adequate notice, and considers this a special condition that agencies may wish to list as an exception to their procedures.

Electronic Dissemination

The January 1989 notice proposed that agencies should examine their information dissemination products to determine whether conditions favor electronic dissemination, and suggested what some of the conditions might be. The notice also stated that agencies should avoid disseminating products that place the Government in unfair competition with the private sector, and that agencies should give preference to basic products and avoid disseminating value-added electronic information products.

This section of the notice generated the most comment. A majority of the commentators took this section as an assault on public policy principles concerning the free flow of information. First, commentators questioned whether the notice took into account the legitimate role of government agencies in the dissemination of government information and the rights of citizens to adequate and preferably convenient access to that information. According to some commentators, the policy as proposed, by impeding agency information dissemination activities, would constitute an obstacle to agencies in carrying out their dissemination mandates.

Second, commentators questioned the statutory basis for a proposed policy which they believed favored the privatization of government information dissemination products. Some voiced the belief that the proposed policy was in conflict with those portions of Title 44 governing Federal printing. They questioned a distinction between electronic information products and other government information products, many asserting that the chapters of Title 44 dealing with printing extend to electronic products and that OMB is wrong to suggest otherwise. (To the extent this last comment is a reference to the section of the January 1989 notice concerning user fees, see the section on user fees below.)

Third, commentators voiced their concerns about too great a reliance on the private sector for the dissemination of government information, particularly in electronic form. They noted the uncertainty of corporate continuity and the lack of accountability and obligation to perform as compared with Federal agencies. They pointed to the risk that, if given too strong a role, private firms might exercise control over the content of public domain information, releasing only that information that would turn a profit. They objected to the possibility that private firms could exact high prices and high profits from the sale of information created with public funds. Commentators believed that the proposed policy could amount to a public subsidy for commercial interests and could effectively create price barriers to government information.

Fourth, commentators focused on the matter of unfair competition, with some alleging that the proposed policy should foster cooperation between the public and private sectors rather than competition, and others holding the view that competition between the two sectors was basically healthy.

Fifth, some commentators focused on the special case of Federal statistical agencies, arguing that these agencies reason for existence is to disseminate general purpose statistics and that the proposed policies fail to take account of, and could inhibit, their special missions.

Sixth, a paragraph in the analysis section of the notice presented an example dealing with CD-ROM (Compact Disk—Read Only Memory). This paragraph occasioned the most comment of any feature of the notice. Commentators took exception to the idea that an agency might disseminate a CD-ROM without any added value; that is, without tailoring it to specific user needs. They argued that such an action would be inconsistent with the purpose of information dissemination: some value must be added to any information to enable it to be used. Commentators also objected strenuously to the suggestion that software development is an inappropriate activity for agencies.

Seventh, some commentators on the other hand pointed to examples where they believed agencies were disseminating valueadded products in competition with the private sector. They expressed the fear that such agency actions would drive away private sector investment from, and ultimately stifle, emergent technologies.

Eighth, comments discussed the responsibility of the Federal Government to guarantee equitable access to government information and alleged that overdependence on the private sector would lead to higher prices for users which, in turn, would undermine equitable access and lead to formation of an information elite composed of those who can afford the higher prices. Several commentators raised the example of a particular agency's automated system. They stressed the positive effects on national competitiveness that the high quality, readily accessible information from the system would provide. They also expressed fears that OMB policy would prohibit the agency from allowing public access to the system except through private vendors that might offer only the profitable portions of the system's database at high cost to the public.

Ninth, commentators alleged that in the January 1989 notice OMB was proposing to differentiate policy for electronic information from policy for printed information. They maintained that the format or media of information should not dictate policy, but that one information policy should apply to all formats or media.

Last, many commentators criticized the proposed policy on electronic dissemination because there was no discussion of the Federal depository library program. Some also mentioned that the National Technical Information Service should be discussed. In their view, any electronic dissemination policy must include these two institutional vehicles for making government information available to the public.

OMB Reaction: First, OMB wishes to make clear that its fundamental philosophy is that government information is a public asset; that is, with the exception of national security matters and such other areas as may be prescribed by law, it is the obligation of government to make such information readily available to the public on equal terms to all citizens; that to the extent the flow of information from the government to the public can be enhanced by the participation of the private sector, such participation should be encouraged; and that participation by the private sector supplements but does not replace the obligations of government. These principles apply whatever the form, printed, electronic, or other in which the information has been collected or stored. OMB did not intend that either OMB Circular No. A-130 or the January 1989 notice should have the effect of dissuading agencies from carrying out activities they believe are necessary for the proper performance of agency functions. OMB will re-examine OMB Circular No. A-130 and the January 1989 notice to ensure that these points are adequately addressed.

Second, as regards the statutory basis, OMB's information resources management policy is based on the Paperwork Reduction Act and on other statutory authorities, as cited in Section 3 of OMB Circular No. A-130. An OMB Circular is unlike a regulation promulgated pursuant to the notice and comment requirements of the Administrative Procedure Act. A Circular does not confer rights or impose obligations on private individuals or organizations. Rather, an OMB Circular imposes binding Administration guidance on executive branch agencies as to how policies and statutes are to be implemented.

Third, as regards reliance on the private sector to disseminate government information, OMB did not intend, either in Circular No. A-130 or in the January 1989 notice, that Federal agencies or the public should be made to rely primarily on the private sector for the dissemination of government information.

Fourth, as regards unfair competition between the public and private sectors, OMB believes that discussions surrounding Circular No. A-130 and the January 1989 notice have polarized debate in ways that may obscure and impede important areas of cooperation between the public and private sectors. In revising the Circular and the notice, OMB will attempt to frame the policy in language that avoids polarization and fosters cooperation.

Fifth, OMB recognizes, as for example at 5 CFR 1320.7(o) and elsewhere, that Federal statistical agencies are special cases in some respects. OMB's intent is to formulate information policy that will apply to all executive branch agencies while taking into account the special circumstances of statistical agencies.

Sixth, as regards the CD-ROM example in the analysis section of the January 1989 notice, OMB agrees that the example was poorly drawn. OMB agrees that government information dissemination products should be tailored to users' needs, and that software development is often a legitimate Federal activity.

Seventh, OMB believes that, all other things being considered, agencies ought to act in a manner that will encourage rather than inhibit private sector investment in emergent technologies.

Eighth, OMB agrees with the view that the Government has a responsibility to guarantee equitable access to government information. As to the concern that overdependence on the private sector could result in higher prices for users, OMB notes the requirement in Circular No. A-130 that agencies shall disseminate information products "in a manner that ensures that members of the public whom the agency has an obligation to reach have a reasonable ability to acquire the information." (Section 8a (11)(b)) The discussion of this policy highlights the

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need to avoid unreasonably high prices for information products.

Ninth, as noted, OMB agrees that a single information policy should apply to government information regardless of format or media.

Last, with respect to the Federal depository libraries and the National Technical Information Services (NTIS), OMB agrees that these are institutional vehicles whose availability should be considered by all government information dissemination programs. In redrafting the policy, OMB will discuss the depository libraries and NTIS. In prescribing the functions of agencies' information dissemination management systems, OMB would consider requiring that agencies ensure that the appropriate information products are made available to the depository libraries.

OMB notes that the depository library program is the administrative responsibility of the Government Printing Office, and therefore does not intend to propose policy for the depository library program as such. In revising OMB Circular No. A-130 and the January notice, OMB does intend to address the question of executive branch agencies' supplying government publications to the depository library program.

User Charges

The January 1989 notice suggested a change in user charges policy as compared with the existing policy found in OMB Circular No. A-25, User Charges. The change consisted of treating government information products as fundamentally different from other goods and services. OMB proposed a ceiling on charges for information products, asserting that, with relatively rare exception, user charges for government information products should never be set higher than a level sufficient to recover the costs of disseminating, not collecting the information. The proposed policy, therefore, would generally preclude user charges that might attempt to recover costs of collecting and processing the information, and would preclude using other standards such as the market value of the information.

For many commentators, it appeared that the term user charges and any discussion thereof connoted higher prices to the public. Some commentators objected to the discussion in the notice's analysis section of "full cost of dissemination," and asserted that application of full cost of dissemination will raise the prices paid by end users in the public. Other commentators raised the objection that user charges are a form of double taxation. The taxpayer, having paid via taxes for the government to create or collect the information, is said to be paying a second time when assessed a user charge. A third set of comments stated that decisions on whether to charge and how much to charge should be based on the nature of the information, circumstances surrounding the particular information product, and the agency's dissemination mission.

In the analysis of user charges, the notice had stated that decisions on pricing and sale of printed government documents were reserved to the Superintendent of Documents, and that therefore the executive branch agencies had discretion only in the setting of user charges for electronic information products. Some commentators took direct issue with this statement, alleging that the statement was incorrect as a matter of law. Other commentators took this statement to mean that OMB was asserting electronic information products were not subject to Chapter 19 of Title 44, U.S.Code, concerning the depository libraries. Still others believed that this statement signaled a bifurcation in information policy with one policy applying to printed information products and another policy applying to electronic products; commentators opposed any such split.

OMB Reaction: The intent of the user charges section of the notice was to propose an across-the-board ceiling on user charges for government information products, except in certain carefully defined cases. Far from raising prices, OMB intended to reassure the public that prices would not be raised above the costs of dissemination. In effect, agencies would be precluded from using information products as a profit center or budgeting mechanism. The public has generally not objected to paying a sales price for GPO publications; the user charge OMB contemplates for other government information products is comparable. Charging for reproduction and distribution of electronic information products, the usual basis for user charges for these products, is consistent with a cost-of-dissemination policy.

As to double taxation, OMB notes that user charges policy has a basis in statute (31 U.S.C. 9701), and the Congress has not viewed user charges as double taxation because they are applied when the recipient receives special benefits. With regard to basing user charges on the nature of the information, the product circumstances, and the agency's mission, OMB believes that this viewpoint is accommodated in the policy of balancing user charges against the need to ensure that products reach the public for whom they are intended.

OMB notes also that OMB Circular No. A-25, User Charges, makes explicit provision for the waiver of user charges when the cost of collecting the fees would be an unduly large part of receipts. The January notice indicated that agencies should balance the requirement for user charges against the need to ensure that information products reach certain members of the public, and that this could be a basis for reducing or eliminating the charges.

With respect to Chapter 17 of Title 44, U.S. Code, OMB asserted only that the Superintendent of Documents prices and sells printed government documents and that executive branch agencies may set prices for electronic information products. Executive branch agencies have priced and sold electronic information products for several decades without legal or policy challenge.

OMB made no statement and drew no firm conclusions as to whether or not Chapter 19 of Title 44, dealing with the depository libraries, applies to electronic information products. The definition of "government publication" in 44 U.S.C. 1901 is: "informational matter which is published as an individual document * * *" OMB does not understand that this definition on its face includes electronic data files, software, online information services, or the like. Section 1711 of Title 44, for example, requires the Superintendent of Documents "to prepare a catalog of Government publications which shall show the documents *printed* during the preceding month * * *" (emphasis added). This statutory language supports OMB's exclusion of non-printed electronic information from the definition of government publication. Therefore, OMB believes it is not clear that agencies at present have a legal obligation to make electronic information products available to depository libraries. Nevertheless, OMB believes that, as a matter of policy, many such products should be made available to the depository libraries in the same manner as printed materials, and intends to redraft the proposed policy to reflect this view.

Immediate Action and Preliminary Conclusions About the Next Steps

OMB will proceed with the development of a new draft policy statement that will reformulate both information collection and information dissemination policy, including the pertinent sections of OMB Circular No.

A-130, the January 1989 notice, and the notice of August 7, 1987, concerning electronic collection of information. OMB in due course will publish the new draft policy statement for comment.

The foregoing summary of comments leads OMB to certain preliminary conclusions about the proper role for executive branch agencies in government information dissemination, and the boundaries between Federal and nonfederal roles. OMB proposes that these conclusions form the basis for OMB's revision of information dissemination policy in OMB Circular No. A-130.

1. The nation benefits from the fact that government information is disseminated by Federal agencies and also by many nonfederal parties, including State and local government agencies, educational and other nonprofit institutions, and for-profit organizations.

2. Over and above their responsibilities to provide access to information under the Freedom of Information Act, the Privacy Act, and the Government in the Sunshine Act, Federal agencies have a general responsibility to disseminate information:

—As appropriate to the pursuit of their mission and program objectives; and
—In the interest of assuring that the public is appropriately informed.

3. Agencies must discharge their information dissemination responsibilities in a manner that:

—Assures the public reasonable and equitable access to government information; and
—Is efficient and economical.

4. Agencies should discharge their information dissemination responsibilities by taking full advantage of all dissemination channels, foremost among which are the Federal depository libraries, but also including other Federal agencies, State and local government agencies, educational and other nonprofit institutions, and for-profit organizations.

5. With respect to the roles of Federal and nonfederal entities, agency dissemination responsibilities can be analyzed as a set of decisions:

—Whether to disseminate a particular government information product or service: a decision made by the Federal agency involved;
—What to disseminate, i.e., the content of a government information product or service: a decision made by the Federal agency;
—When to disseminate, i.e., the timing and frequency of a product or service: a decision made by the Federal agency;
—How to disseminate, i.e., the strategy for getting a product or service to users, including format or medium: a decision made by the Federal agency;
—What price to charge for the product or service: a decision made by the Federal agency;
—Who carries out the primary or official dissemination activities, after the preceding questions are answered: a decision made by the Federal agency, which may result in activities by the Federal agency or by nonfederal parties;
—Who carries out secondary dissemination, once primary or official dissemination has been accomplished: a decision made by any interested party, Federal or nonfederal.

OMB requests public comment on the foregoing, particularly with respect to OMB's reaction to comments and preliminary conclusions. OMB also solicits positive formulations of policy statements with respect to the topics treated herein; that is, where members of the public believe the OMB formulation is inadequate or incomplete, OMB invites members of the public to offer their own formulations. OMB invites comments as to whether it would be useful for OMB to hold a public hearing on these issues.

S. Jay Plager,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 89-14224 Filed 6-14-89; 8:45 am]

BILLING CODE 3110-01-M

APPENDIX 4.—FREEDOM OF INFORMATION ACT FEE USE AND FEE WAIVER GUIDANCE

federal register

Friday
March 27, 1987

Part V

Office of Management and Budget

Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines

OFFICE OF MANAGEMENT AND BUDGET

The Freedom of Information Reform Act of 1986; Uniform Freedom of Information Act Fee Schedule and Guidelines

AGENCY: Office of Management and Budget.

ACTION: Final publication of Fee Schedule and Guidelines implementing certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99-570).

SUMMARY: These Guidelines implement certain provisions of the Freedom of Information Reform Act of 1986 which require the Office of Management and Budget (OMB) to promulgate guidelines containing a uniform schedule of FOIA fees applicable to all agencies that are subject to the FOIA.

EFFECTIVE DATE: April 27, 1987. Agencies are required to promulgate regulations pursuant to notice and comment implementing the provisions of this schedule and guidelines by April 25, 1987. They should develop and publish proposed rules as soon as possible after publication of this OMB Fee Schedule and Guidelines. Agencies will have met the statutory deadline if they promulgate final versions of such implementing regulations in the **Federal Register** on or before that date, even though their regulations will not be effective until 30 days after the date of publication.

FOR FURTHER INFORMATION CONTACT: Robert N. Veeder, Office of Management and Budget, Office of Information and Regulatory Affairs, Information Policy Branch, Telephone (202) 395-4814.

SUPPLEMENTARY INFORMATION: The Freedom of Information Reform Act of 1986 (Pub. L. 99-570) amended the Freedom of Information Act (5 U.S.C. 552) by modifying the terms of exemption 7 and by supplying new provisions relating to the charging and waiving of fees. The Reform Act specifically required the Office of Management and Budget to develop and issue a schedule of fees and guidelines, pursuant to notice and comment.

On January 16, 1987, OMB published a proposed fee schedule and guidelines explaining how to implement the schedule. The notice invited public comment especially on the definitions of "commercial," "representative of the news media," "educational institution," "non-commercial scientific institution," "search," and "review."

At the end of the comment period, February 17, 1987, OMB had received 80 comments from 6 identifiable categories of commentator:

- The Congress (1)
- The Federal Agencies (11)
- Publishers of Newsletters (41)
- Public interest groups affiliated with the news media (11)
- Other public interest groups (12)
- Individual members of the public (4)

Although many of the commentators focused exclusively on OMB's proposed definition of "representative of the news media," a significant number provided substantive comments on other aspects of the guidelines and schedule. These comments are discussed in the sectional analysis that follows.

Several commentators urged OMB to publish a revised schedule and guidance for a second round of public comment, while acknowledging the problems presented by the statutory deadline requiring agencies to promulgate their own fee regulations by April 25, 1987. OMB has carefully considered this suggestion, but declines to adopt it. Since agencies' regulations must be published not only pursuant to (and thus following) OMB's issuance and also for notice and comment, a second round of comment would make it impossible for agencies to meet the statutory deadline. It should be noted, however, that OMB intends to follow agencies' implementation of the schedule and guidelines closely and will issue clarifications when needed.

Section-by-Section Analysis

Section 1. Purpose.

Many commentators suggested that OMB's emphasis on collecting FOIA fees was contrary to the intent of the FOIA amendment which they insisted was to make information more widely and cheaply available, and they urged that we emphasize this intention. While it is true that many of the provisions of the FOIA amendments will have this effect, OMB's role in this process is limited to that of providing guidance on charging fees under the FOIA. Moreover, given OMB's budgetary responsibilities, it is quite appropriate for it to require agencies to develop and diligently carry out programs that charge, collect and deposit fees for FOIA services where such activities are clearly permitted by statute. Accordingly, no changes were made to this section.

Section 5. Authorities.

One commentator objected to the citation of statutory authorities other than the Freedom of Information Reform Act: specifically, the Paperwork Reduction Act of 1980 and the Budget and Accounting Act and Budget and Accounting Procedures Act. It was not OMB's intention to enlarge the scope of its authority or responsibilities in developing FOIA fee guidance by citing these Acts. Nevertheless, these Acts do provide a framework for the development and issuance of OMB policies relating to information access and dissemination policies and the collecting and disposition of fees. The Paperwork Reduction Act, for example, makes the Director of OMB responsible for developing and implementing "Federal information policies, principles, standards, and guidelines" (44 U.S.C. 3504(a)). Among these responsibilities are those for issuing guidance on the Privacy Act of 1974. These FOIA fee guidelines rely on that authority to remind agencies that the fee schedule provided herein does not apply to individuals seeking access to their own records which are filed in Privacy Act systems of records. Similarly, the budgetary authorities cited mandate that funds agencies receive for providing FOIA services are to be deposited in the general revenues of the United States rather than individual agency accounts. OMB has made one change to this section and that is to add a reference to the Privacy Act of 1974.

Section 6. Definitions:

Section 6b. "Statute Specifically Providing for Setting the level of fees for particular types of records."

A few commentators addressed this definition and suggested that it was too broad and general and could permit agencies, on a discretionary basis, to "circumvent the general FOIA policy of minimal fees for statutory access to agency records." The commentators urged that we include in the definition that a qualifying statute would have to specifically establish a level of fees and specifically identify a particular type of records for which the fees could be charged.

It was not OMB's intention to have this provision read broadly, since the legislative history relating to this provision is unambiguous in stating that it is not intended to change existing law. We have therefore revised the section to meet the concerns of the commentators. We would note only, however, that a number of commentators misquoted the plain wording of the provision by insisting that a qualifying statute must set a specific level of fees rather than specifically providing for the setting of fees by an agency. Our guidance makes it clear that a qualifying statute must require, not merely permit, an agency to establish fees for particular documents.

The commentators also objected to the first subparagraph in the definition which refers to statutes that "serve both the general public and private sector organizations by conveniently making available government information . . . ." and urged its elimination on the basis that it is "so vague and meaningless that it could probably be applied to any statute allowing disclosure of information." The objectionable paragraph is taken from the legislation establishing the National Technical Information Service (albeit somewhat condensed) and we have left it unchanged, but note that it is to be read in conjunction with the other subparagraphs in providing a generic description of such fee statutes.

Section 6c. "Direct Costs."

Two categories of commentators addressed the issue of charging a percentage of an employee's salary to cover benefits. Non-federal commentators thought that such charges were improper because they represented agency overhead costs rather than direct costs. Federal agency commentators, on the other hand, pointed out that the 16 percent rate the guidance attributed to benefits was inconsistent with OMB's own guidance in Circular No. A-76 which uses a much higher percentage.

As to the first point, the Freedom of Information Act permits agencies to charge only for allowable reasonable direct costs of providing certain FOIA services. Employee salaries are clearly a direct cost of providing FOIA services. The cost to the agency of conducting, for example, a search for a document is the salary that must be paid to the employee performing the search multiplied by the time he or she spends searching.

The elements used to calculate an employee's total salary are the pay grade of the employee and any fringe benefits. Because the agency is permitted to charge only "reasonable" direct costs, the inclusion of some kinds of fringe benefits would be clearly unreasonable. For example, an agency that maintains recreational facilities for employees and their families could not count the cost of operating the facility as a reasonable direct cost for FOIA fee purposes. But, an employer's contribution to a retirement system and to health and life insurance programs are concrete identifiable costs directly associated with the salary of the employee and should be counted as part of the direct costs of providing FOIA services.

As to the second point, the figure cited in OMB Circular No. A-76 was developed for a different purpose and on a different basis. The circular uses a figure, for example, of 27.9 percent as a cost factor in determining agency costs for employee retirement. The figure includes not only the direct 7 percent agency contribution, but other governmental sources of funds for the Civil Service Retirement System. While 27.9 percent may be an appropriate figure for purposes of Circular No. A-76, the "direct reasonable cost" restriction of the Freedom of Information Act precludes using more than the 7 percent agency contribution. OMB arrived at the 16 percent figure in consultation with the Office of Personnel Management, and it is retained in the final version of our guidance.

Some readers noted that the 16 percent figure was rendered 16.1 in Section 7a of the guidelines. That was a typographical error.

Section 6d. "Search."

Several commentators objected to the inclusion of line-by-line searches as an example of search. It is not often that an agency would need to read a document line-by-line to locate records responsive to a request, and agencies should not artificially raise search costs by unnecessarily spending time reading a document for responsive records when it would be cheaper and faster simply to reproduce the entire document. Our intention was to provide guidance on the *scope* of what constitutes FOIA search and we were careful to distinguish line-by-line search from review. We have accordingly modified the section to make it clear that agencies should not conduct line-by-line searches when whole document reproduction would be cheaper and faster.

Section 6f. "Review."

Several Federal agency commentators suggested that we provide greater detail on what constitutes review of documents for which agencies may charge commercial use requesters. We have therefore expanded the explanation.

Section 6g. "Commercial Use Request."

Athough the legislative history is in conflict on the precise meaning of this provision, it seems clear that the Congress intended to distinguish between requesters whose use of the information was for a use that furthered their business interests, as opposed to a use that in some way benefited the public. The amendment shifts some of the burden of paying for the FOIA to the former group and lessens it for the latter.

As opposed to the other fee categories created by the amendment, inclusion in this one is determined not by the identity of the requester, but the use to which he or she will put the information obtained. Because "use" is the exclusive determining criterion, it is possible to envision a commercial enterprise making a request that is not for a commercial use. It is also possible that a non-profit organization could make a request that is for a commercial use. Moreover, because "use," not identity, controls, agencies will have to spend more time than they do now in determining what the requester intends to do with the records sought.

Both the legislative history and the comments on OMB's proposed fee guidance contain suggestions that agencies can look to the identities of requesters and automatically assign them to or exclude them from this category. Indeed, the original OMB proposal instructed agencies that a request, without further explanation, submitted on corporate letterhead could be presumed to be for a commercial use. Commentators urged that we also include a presumption that requests submitted on the letterhead of a non-profit organization be for a non-commercial purpose. We no longer think either presumption should be made automatically since both would be based upon the identity of the requester as opposed to the use to which he or she intended to put the records sought. We have therefore revised the definition to eliminate the example.

Many commentators were troubled by the breadth of OMB's proposed definition of "commercial use," arguing that by defining such a use as one which is "related to" commerce, OMB was providing too tenuous a connection to be meaningful. OMB has revised the definition to attempt to provide a more meaningful linkage. "Commercial use" is therefore defined as a use that "furthers the commercial, trade or profit interests of the requester or person on whose behalf the request is made."

Section 6h. "Educational Institution."

Many commentators were concerned about our definition of "educational institution." One Federal agency, for example, pointed out that it would exclude high schools from this category of FOIA requesters. The legislative history is unhelpful on this point, nowhere defining the term. One commentator recommended the definition found in Webster's *New Twentieth Century Dictionary of the English Language* (2nd. ed. 1968) in which the word "education" means providing instruction or information, an "educational institutional" is an entity organized to provide instruction or information. The problem with this suggestion is that it is not sufficiently discriminating. There are very few organizations that do not in some way "provide information" and who would not qualify as "an entity organized to provide information."

Other commentators recommended the definition of educational institution used by the Internal Revenue Service in its regulations implementing Section 501(c)(3) of the Tax Code. Institutions meeting this definition qualify for tax exempt treatment. The commentators pointed out that since the task the FOIA Reform Act set OMB was to develop a uniform fee schedule, looking to an existing definition would be consistent with the statutory intent. After some consideration, OMB agrees that while it would be appropriate to incorporate an existing and well understood definition, neither the Tax Code nor the IRS regulations implementing the Code serve that purpose well. The statute merely provides that "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for . . . educational purposes . . .," qualify for exemption from taxation. The IRS regulations interpreting this somewhat vague statutory provision are themselves too general to be useful to the agencies in determining an institution's eligibility under the FOIA fee schedule. Moreover, OMB does not think it is appropriate to tie eligibility for inclusion in the "educational institution" fee category to an IRS interpretation of the institution's eligibility for tax exempt status.

Rather than using the IRS definition, OMB thinks it more appropriate to look to the Department of Education definition found in 20 U.S.C. 1681(c). Accordingly, the terms of that statutory definition have been adapted for use in a revised definition, but it is intended that they be given their plain meaning in the FOIA context. Moreover, these terms must be applied in conjunction with the FOIA's "scholarly research" requirement. Thus, the definition has been revised to read " 'educational institution' refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education and an institution of vocational [illegible]tion, which operates a progra[illegible]grams of scholarly research."

As a practical matter, it is unlikely that a preschool or elementary or secondary school would be able to qualify for treatment as an "educational" institution since few preschools, for example, could be said to conduct programs of scholarly research. But, agencies should be prepared to evaluate requests on an individual basis when requesters can demonstrate that the request is from an institution that is within the category, that the institution has a program of scholarly research, and that the documents sought are in furtherance of the institution's program of scholarly research and not for a commercial use.

Agencies should ensure that it is apparent from the nature of the request that it serves a scholarly research goal of the institution, rather than an individual goal. Thus, for example, a request from a professor of geology at a State university for records relating to soil erosion, written on letterhead of the Department of Geology, could be presumed to be from an educational institution. A request from the same person for drug information from the Food and Drug Administration in furtherance of a murder mystery he is writing would not be presumed to be an institutional request, regardless of whether it was written on institutional stationary. Indeed, such a request could reasonably be construed to be a request that is for a commercial use.

The institutional versus individual test would apply to student requests as well. A student who makes a request in furtherance of the completion of a course of instruction is carrying out an individual research goal and the request would not qualify, although the student in this case would certainly have the opportunity to apply to the agency for a reduction or waiver of fees.

One commentator suggested that OMB should read the phrase "scholarly or scientific research" conjunctively in association with the term "educational institution" so that a request from an educational institution in furtherance of either scholarly or scientific research would qualify. OMB rejected this suggestion; the statute and the legislative history recite the formula "educational or scientific institution/scholarly or scientific research," and it seems clear that the phrase was meant to be read disjunctively so that scholarly applies to educational institution and scientific applies to non-commercial scientific institution.

Section 6i. "Non-Commercial Scientific Institution."

A number of Federal agencies commented on this definition. Several suggested that qualifying institutions be limited to those conducting research in the natural sciences. OMB rejected this suggestion; there is no support in either the statute, the legislative history, or the plain meaning of the term to permit such a narrow reading.

Other agency commentators suggested that the word "non-commercial" be more fully defined so that an institution whose purpose was to further a specific product or industry would be excluded from this category. OMB has accepted this suggestion and modified the definition accordingly.

OMB has also revised the definition to ensure consistency with the definition of "commercial" in Section 6g.

Section 6j. "Representative of the News Media."

This definition drew the most comments of any section. Commentators generally fell into two classes. The first consisted of newsletter publishers and their representatives who were concerned that the guidelines could be read to exclude them from qualifying as "representatives of the news media." The second class had broader concerns about the definition, and were especially concerned about its perceived narrowness.

Many of the newsletter commentators pointed to their accreditation to the House and Senate press galleries as evidence of their membership in the news media category. It was not OMB's intention to exclude the publishers of newsletters from this category. The examples provided in the definition were not intended to be all-inclusive. Certainly newsletters, if they meet all of the other criteria, would qualify as "representatives of the news media" for purposes of this definition. To avoid implying any such limitation, OMB has replaced the references to "newspaper" and "magazine" in the definition with the word "periodical."

The other class of commentators criticized the narrowness of OMB's proposed definition, pointing to the words of Senator Leahy in the legislative history that "[i]t is critical that the phrase 'representative of the news media' be broadly interpreted if the Act is to work as expected." Cong. Rec. S.14298 (daily ed. September 30, 1986). They asserted that including the words "established," "general circulation," "working for," and "regularly," all served to unnecessarily limit what they perceived to be the breadth of the definition's coverage.

OMB has carefully considered these comments. Our intention in this section was to provide the agencies and the public with a workable definition. We used the word "established" not to limit eligibility only to those organizations in being at the time of the issuance of the guidance, but simply to indicate that a qualifying organization must be able to show some evidence of its identity beyond the mere assertion that it is a member of the news media. Press accreditation, guild membership, a history of continuing publication, business registration, Federal Communications Commission licensing, for example, would suffice. The word "regularly" which the legislative history shows Senator Leahy using in precisely this context, was meant to indicate that a qualifying organization would have to show that it was a continuing venture that was publishing or broadcasting news to the public. Thus, a newly established newspaper would be able to do so by demonstrating that it had held itself out for subscription and had in fact enrolled subscribers.

The phrase "general circulation" was misinterpreted by many commentators: members of the public and Federal agencies as well. OMB intended the phrase to refer to a newsworthy product that was broadcast or published in a manner that made it *available* to the general public, not that it had to have an exclusively general content or that it had to be circulated exclusively to a general audience.

In any case, OMB has sought to address these concerns by redrafting the section so that "news media" is defined generically as "an entity that is organized and operated to publish or broadcast news to the public." *The American Heritage Dictionary* (Second College Edition, 1982) defines the word "news" as ". . . Recent events and happenings, esp. those that are unusual or notable. . . . Information about recent events of general interest, esp. as reported by newspapers, periodicals, radio or television . . . A presentation or broadcast of such information: newscast. . . . Newsworthy material."

Thus, "news media" is further limited to purveyors of information that is current or would be of current interest. The Congress could easily have drafted the section to read "representative of the media" rather than "news media," but it did not; therefore, OMB thinks it is reasonable to give some weight to the term "news" when constructing a definition. The examples given cite the traditional models—radio and television stations as well as publishers of periodicals that disseminate "news,"—but also look to evolving non-traditional distributors, such as videotext. While these examples are not meant to be all-inclusive, they *are* meant to be limiting, and to give meaning to the phrase "publish or broadcast news" so that it implies something more than merely "make information available." The news media perform an active rather than passive role in dissemination. Thus, they can be distinguished, for example, from an entity such as a library which stores information and makes it available on demand.

The provision for freelancer eligibility, especially the term "solid basis for expecting publication" also drew comments. OMB's aim was to incorporate legitimate freelance representatives of the news media into the categorical definition without opening the door to anyone merely calling himself or herself a freelance journalist. Many commentators noted that while it was quite reasonable to require freelancers to show some evidence that they could expect their work to be published before granting them access to this category of requester, they were troubled by the use of the phrase "solid basis." OMB has attempted to address these concerns by adding to this section examples amplifying what solid basis means, e.g., a publication contract would be the clearest basis, but freelancer's past publication history could also be considered. In any case, freelancers who do not qualify for inclusion in the "representatives of the news media" category because they cannot demonstrate a solid basis for expecting publication could be eligible to seek a reduction or waiver of fees if they meet the statutory waiver criteria.

Section 7. "Fees to be Charged."

A number of commentators expressed frustration that OMB was not issuing a unitary schedule of fees which would establish one government-wide charge for each FOIA service performed. OMB is sympathetic to this position, but does not believe that the FOIA Reform Act gives it the authority to do so. Because the FOIA Reform Act requires each agency's fees to be based upon its direct reasonable operating costs of providing FOIA services, OMB is precluded from establishing a government-wide fee schedule.

Commentators urged OMB to emphasize in this section that the effect of the FOIA amendment was to minimize costs by creating categorical limitations on what fees could be charged. They asserted that OMB's direction to the agencies to "charge fees that recoup the full direct costs they incur . . .," was at the least misleading, given the statutory limitations. OMB agrees and has revised the sentence to read "full allowable direct costs" to make it clear that agencies must look to the categorical limitations in the statute and charge fees accordingly.

Commentators pointed out that OMB's encouragement of agencies to use private sector services to locate, reproduce and disseminate records in response to FOIA requests, while consistent with the policy articulated in OMB Circular No. A-130, needed some limitations. Commentator specifically wanted OMB to make it clear that the ultimate costs for requesters serviced by private sector contractors should be no different than if serviced by an agency. They also suggested that OMB clarify that there are some services that agencies may not contract out: e.g., reviewing records for the application of an exemption or the waiving of a fee. OMB has accordingly redrafted the section to accommodate these concerns.

Section 7b. "Computer Searches for Records."

At the suggestion of a Federal agency commentator, OMB has added a provision permitting agencies to establish agency-wide average computer processing unit operating costs and operator/programmer salaries for purposes of determining fees for computer searches where they can reasonably do so because these costs are relatively uniform across the agency. This provision is meant to encourage agencies to minimize FOIA costs by reducing the administrative steps necessary to establish a fee for a particular search. It is not meant to allow agencies to raise the prices of such searches by including in the average expensive but seldom-used equipment.

OMB has also revised this section to make it clear that agencies may only charge search costs for that portion of the operation of the central processing unit (CPU) and operator salary that is directly attributable to the FOIA search.

Section 7c. "Review of Records."

Several Federal agency commentators requested additional clarification of when review costs could be charged, i.e., at what point in the processing of a request were review charges permitted and could charges be made for subsequent review of materials. OMB has revised this section to address these concerns and clarify that charges may only be assessed the first time an agency reviews a record for the application of an exemption and not at the administrative appeal level of an exemption already applied.

At the suggestion of a Federal agency commentator, OMB has added a provision permitting agencies to establish an agency-wide average cost for review when review is performed by a single class of employee. The intent is to minimize agency administrative costs.

Section 7d. "Duplication of Records."

One commentator objected to the salary of the employee operating the duplicating machinery being included as a reasonable direct cost of duplication. Since the operation of a duplicating machine is necessary to produce a copy of a document, OMB considers this a reasonable direct cost and has not changed the section.

Section 7e. "Other Charges."

Several commentators objected to the inclusion of fees for normal packaging and mailing of records in this section, arguing that mailing records was a reasonable interpretation of the FOIA requirement that agencies "make . . . records promptly available . . ." They argued that an agency requiring a requester to come from Alaska to Washington, D.C. to obtain records responsible to his request could hardly be said to be making records available. Upon reflection, OMB concurs and has deleted charges for ordinary packaging and mailing as examples of allowable other charges.

Section 7f. "Restrictions on Assessing Fees."

OMB has revised this section to provide greater detail on how agencies should develop costs relating to the 100 free pages of reproduction and two hours of free search time the FOIA Reform Act permits certain classes of requesters. The revision also reminds agencies of the consequences of these restrictions for the use of contractors to perform search and duplication services: specifically, that contracts must incorporate free search and reproduction services when appropriate.

OMB also added an explanation of how agencies should determine what constitutes two hours of free computer search time. Since most computer searches are accomplished in seconds and fractions of seconds, it would be unreasonable to interpret the statutory free search time to mean that an individual would be entitled to require an agency to operate a computer for two hours. The cost and the disruption of an agency's normal ADP activities would be prohibitively expensive. OMB has therefore developed a formula based upon the concept of manual search, i.e., search done by an agency employee who examines records to find those that are responsive to a request. The employee performing the computer search who is most nearly like the clerical searcher is the operator. The guidance, therefore, tells agencies that a requester is entitled to two hours of operator salary translated into computer search costs (computer search consists of operator salary plus CPU operating time cost for the duration of the search).

Section 7g. "Waiving or Reducing Fees."

OMB has dropped this section. A number of commentators pointed out that OMB's role is limited by the plain wording of the statute to developing guidelines and a fee schedule. In looking carefully at this requirement, OMB has determined that developing a schedule providing for the charging of fees and issuing guidance on when fees should be reduced or waived are separate issues and that OMB's role does not involve the latter consideration. In developing a fee schedule and guidance on its implementation that the statute clearly contemplates, it was necessary for OMB to carefully define the categories or classes of requester and explain to the agencies what fees to charge them. Thus, for example, OMB discussed the exclusion of search fees for educational/scientific institutional requesters and representatives of the news media. This discussion was about the establishment and limitation of fees for a particular category of requester. It was not about waiving search fees since the statute gives agencies no discretion about what search fees to charge this class of requester. OMB considers the development of such definitions as required by the statute and thus squarely within its proper responsibilities.

Section 8. "Fees to be Charged."

OMB has added the phrase "requesters must reasonably describe the records sought" to all categories of requesters to accommodate some commentators' concerns that OMB was creating a new requirement for a particular class of requester by applying this requirement to educational/scientific institutional requesters and representatives of the news media alone.

Section 8d. "All Other Requesters."

OMB has revised this section to explain that the requests of record subjects asking for copies of records about themselves filed in agencies' systems of records must be processed under the Privacy Act's fee schedule.

Section 8a. "Commercial Use Requesters."

OMB has removed the reference to fee waivers, based upon the discussion in Section 7g. above.

Section 8e. "Charging Interest."

OMB has revised this section to specify that interest will accrue from the date the bill was mailed if fees are not paid by the 30th day following the billing date. To ensure that agencies do not bill interest because of defects in their own administrative procedures, the section has been revised to provide that agencies should ensure their accounting procedures are adequate to properly credit a requester who has remitted the fee within the time period. To guard against inadequate processing procedures, the guidelines require that receipt of a fee by the agency, whether processed or not, will stay the accrual of interest.

Section 8b. "Charges for Unsuccessful Search."

Many requesters urged OMB to delete this section. Some argued that it could be used by an agency to surprise and unwary requester with an unexpected and potentially ruinous bill. OMB thinks that an agency should be entitled to charge for unsuccessful search, but agrees that it should be done with the knowledge and consent of the requester. Thus the section has been revised to require agencies to notify requesters who have not agreed to pay fees as high as those anticipated when charges are likely to exceed $25.

Section 8c. "Aggregating Requests."

Requesters generally agreed that agencies should not permit a requester to make multiple requests merely to avoid paying fees. There was disagreement about what standard to use in such cases and many requesters urged that OMB adopt a 30-day limit.

The 30-day limit, while providing certainty for both the requester and the agency, does not achieve the goal of allowing an agency to identify requesters who are attempting to circumvent the fee provisions of the statute and charge accordingly. Therefore, OMB has declined to change its original proposal, a "reasonable belief" standard, but has provided examples to help agencies understand what "reasonable" means in this context. Thus, agencies could presume that multiple requests for documents that could reasonably have been the subject of a single request and which occur within a 30-day period are made to avoid paying fees. Agencies may make that presumption for requests occurring over a longer period, but should have a solid basis for doing so.

Commentators also suggested that agencies should not be able to aggregate requests from a single requester for records on unrelated subjects nor from different requesters for records about the same subject. As to the first, OMB agrees and has revised this section to reflect this concern. As to the second, OMB does not agree that agencies should in no circumstances be able to aggregate requests from multiple users. However, such aggregation should occur rarely and only when the agency has solid evidence that multiple requesters are colluding to avoid paying FOIA fees. OMB has included cautions to this effect in the section.

Section 8d. "Advance Payments."

The Amendments clearly permit agencies to charge and collect advance payments in two specific circumstances: (1) When fees will exceed $250; or when a requester has previously failed to pay fees in a timely fashion. Non-federal commentators generally argued that this provision should be read as a limitation rather than an authorization: i.e., "agencies may only charge advance fees when. . . ." OMB has accordingly revised this section to incorporate the fee limitation concept and also to ensure that agencies use this provision fairly. Thus, when agencies determine the estimated fee is likely to exceed $250, they should seek satisfactory assurances of payment if the requester has a record of prompt payment. If the requester has no history of payment, they may ask for an advance payment of an amount up to the estimated cost. For requesters who have failed to pay in a timely fashion in the past, however, or who are currently delinquent, agencies are encouraged to require full prepayment of the estimated amount.

Uniform Freedom of Information Act Fee Schedule and Guidelines

To the Heads of Executive Departments and Establishments

1. *Purpose*—This Fee Schedule and Guidelines implement certain provisions of the Freedom of Information Reform Act of 1986 (Pub. L. 99–570) which require the Office of Management and Budget to promulgate guidelines containing a uniform schedule of FOIA fees applicable to all agencies that are subject to the FOIA.

Data from agencies' annual FOIA reports to the Congress as well as studies by the General Accounting Office and others indicate that inconsistent application of the Act's fee provisions has sometimes resulted in inequitable treatment of users of the Act as well as substantial loss of revenues to the Treasury. While the legislative history of the 1974 amendments to the Freedom of Information Act shows that the Congress did not intend that fees be erected as barriers to citizen access, it is quite clear that the Congress did intend that agencies recover of their costs. The 1986 Amendments to the Act clarify that congressional intention further by creating specific categories of requesters and prescribing fees for each category. Therefore, these Guidelines provide a schedule of fees and related administrative procedures in order to establish a consistent government-wide framework for assessing and collecting FOIA fees.

2. *Scope*—This Fee Schedule and Guidelines apply to all agencies subject to the Freedom of Information Act (see 5 U.S.C. 552(f)).

3. *Effective Date*—This Fee Schedule and Guidelines are effective April 27, 1987.

4. *Inquiries*—Inquiries should be directed to Robert N. Veeder at the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395–4814.

5. *Authorities*—The Freedom of Information Act (5 U.S.C. 552), as amended; the Paperwork Reduction Act (44 U.S.C. 35); the Privacy Act of 1974 (5 U.S.C. 552a); the Budget and Accounting Act of 1921 (31 U.S.C. 1 et. seq.); the Budget and Accounting Procedures Act (31 U.S.C. 67 et seq.).

6. *Definitions*—For the purpose of these Guidelines:

a. All the terms defined in the Freedom of Information Act apply.

b. A "statute specifically providing for setting the level of fees for particular types of records" (5 U.S.C. 552(a)(4)(A)(vi)) means any statute that specifically requires a government agency, such as the Government Printing Office (GPO) or the National Technical Information Service (NTIS), to set the level of fees for particular types of records, in order to:

(1) Serve both the general public and private sector organizations by conveniently making available government information;

(2) Ensure that groups and individuals pay the cost of publications and other services which are for their special use so that these costs are not borne by the general taxpaying public;

(3) Operate an information dissemination activity on a self-sustaining basis to the maximum extent possible; or

(4) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

Statutes, such as the User Fee Statute, which only provide a general discussion of fees without explicitly requiring that an agency set and collect fees for particular documents do not supersede the Freedom of Information Act under section (a)(4)(A)(vi) of that statute.

c. The term "direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents to respond to a FOIA request. Direct costs include, for example, the salary of the employee performing work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space, and heating or lighting the facility in which the records are stored.

d. The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Agencies should ensure that searching for material is done in the most efficient and least expensive manner so as to minimize costs for both the agency and the requester. For example, agencies should not engage in line-by-line search when merely duplicating an entire document would prove the less expensive and quicker method of complying with a request. "Search" should be distinguished, moreover, from "review" of material in order to determine whether the material is exempt from disclosure (see subparagraph 6f below). Searches may be done manually or by computer using existing programming.

e. The term "duplication" refers to the process of making a copy of a document necessary to respond to an FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine readable documentation (e.g., magnetic tape or disk), among others. The copy provided must be in a form that is reasonably usable by requesters.

f. The term "review" refers to the process of examining documents located in response to a request that is for a commercial use (see subparagraph 6g below) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

g. The term "'commercial use' request" refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, agencies must determine the use to which a requester will put the documents requested. Moreover, where an agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is not clear from the request itself, agencies should seek additional clarification before assigning the request to a specific category.

h. The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research.

i. The term "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in 6g above, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry.

j. The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a solid basis for expecting publication through that organization, even though not actually employed by it. A publication contract would be the clearest proof, but agencies may also look to the past publication record of a requester in making this determination.

7. *Fees To Be Charged—General.* Agencies should charge fees that recoup the full allowable direct costs they incur. Moreover, they shall use the most efficient and least costly methods to comply with requests for documents made under the FOIA.

Agencies are encouraged to contract with private sector services to locate, reproduce and disseminate records in response to FOIA requests when that is the most efficient and least costly method. When doing so, however, agencies should ensure that the ultimate cost to the requester is no greater than it would be if the agency itself had performed these tasks. In no case may an agency contract out responsibilities which the FOIA provides that it alone may discharge, such as determining the applicability of an exemption, or determining whether to waive or reduce fees.

In addition, agencies should ensure that when documents that would be responsive to a request are maintained for distribution by agencies operating statutory-based fee schedule programs (see definition in paragraph 6b above), such as the NTIS, they inform requesters of the steps necessary to obtain records from those sources.

a. Manual Searches for Records—Whenever feasible, agencies should charge at the salary rate(s) (i.e. basic pay plus 16 percent) of the employee(s) making the search. However, where a homogeneous class of personnel is used exclusively (e.g., all administrative/clerical, or all professional/executive), agencies may establish an average rate for the range of grades typically involved.

b. Computer Searches for Records—Agencies should charge at the actual direct cost of providing the service. This will include the cost of operating the central processing unit (CPU) for that portion of operating time that is directly attributable to searching for records responsive to a FOIA request and operator/programmer salary apportionable to the search. When agencies can establish a reasonable agency-wide average rate for CPU operating costs and operator/programmer salaries involved in FOIA searches, they may do so and charge accordingly.

c. Review of Records—Only requesters who are seeking documents for commercial use may be charged for time agencies spend reviewing records to determine whether they are exempt from mandatory disclosure. It should be noted that charges may be assessed only for the *initial* review; i.e., the review undertaken the first time an agency analyzes the applicability of a specific exemption to a particular record or portion of a record. Agencies may not charge for review at the administrative appeal level of an exemption already applied. However, records or portions of records withheld in full under an exemption which is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs for such a subsequent review would be properly assessable. Where a single class of reviewers is typically involved in the review process, agencies may establish a reasonable agency-wide average and charge accordingly.

d. Duplication of Records—Agencies shall establish an average agency-wide, per-page charge for paper copy reproduction of documents. This charge shall represent the reasonable direct costs of making such copies, taking into account the salary of the operators as well as the cost of the reproduction machinery. For copies prepared by computer, such as tapes or printouts, agencies shall charge the actual cost, including operator time, of production of the tape or printout. For other methods of reproduction or duplication, agencies should charge the actual direct costs of producing the document(s). In practice, if the agency estimates that duplication charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer a requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

e. Other Charges—It should be noted that complying with requests for special services such as those listed below is entirely at the discretion of the agency. Neither the FOIA nor its fee structure cover these kinds of services. Agencies should recover the full costs of providing services such as those enumerated below to the extent that they elect to provide them:

(1) Certifying that records are true copies;

(2) Sending records by special methods such as express mail, etc.

f. Restrictions on Assessing Fees—With the exception of requesters seeking documents for a commercial use, Section (4)(A)(iv) of the Freedom of Information Act, as amended, requires agencies to provide the first 100 pages of duplication and the first two hours of search time without charge. Moreover, this section prohibits agencies from charging fees to any requester, including commercial use requesters, if the cost of collecting a fee would be equal to or greater than the fee itself. These provisions work together, so that except for commercial use requesters, agencies would not begin to assess fees until after they had provided the free search and reproduction. For example, for a request that involved two hours and ten minutes of search time and resulted in 105 pages of documents, an agency would determine the cost of only 10 minutes of search time and only five pages of reproduction. If this cost was equal to or less than the cost to the agency of billing the requester and processing the fee collected, no charges would result.

The elements to be considered in determining the "cost of collecting a fee," are the administrative costs to the agency of receiving and recording a requester's remittance, and processing the fee for deposit in the Treasury Department's special account (or the agency's account if the agency is permitted to retain the fee). The per-transaction cost to the Treasury to handle such remittances is negligible and should not be considered in the agency's determination.

For purposes of these restrictions on assessment of fees, the word "pages" refers to paper copies of a standard agency size which will normally be "8½ x 11" or "11 by 14." Thus, requesters would not be entitled to 100 microfiche or 100 computer disks, for example. A microfiche containing the equivalent of 100 pages or 100 pages of computer printout, however, might meet the terms of the restriction.

Similarly, the term "search time" in this context has as its basis, *manual search*. To apply this term to searches made by computer, agencies should determine the hourly cost of operating the central processing unit and the operator's hourly salary plus 16 percent. When the cost of the search (including the operator time and the cost of operating the computer to process a request) equals the equivalent dollar amount of two hours of the salary of the person performing the search, i.e., the operator, agencies should begin assessing charges for computer search.

8. *Fees to be Charged—Categories of Requesters*. There are four categories of FOIA requesters: commercial use requesters; educational and non-commercial scientific institutions; representatives of the news media; and all other requesters. The Act prescribes specific levels of fees for each of these categories:

a. Commercial use requesters—When agencies receive a request for documents for commercial use, they should assess charges which recover the full direct costs of searching for, reviewing for release, and duplicating the records sought. Requesters must reasonably describe the records sought. Commercial use requesters are not entitled to two hours of free search time nor 100 free pages of reproduction of documents. Agencies are reminded that they may recover the cost of searching for and reviewing records even if there is ultimately no disclosure of records (see section 9b below).

b. Educational and Non-commercial Scientific Institution Requesters—Agencies shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, requesters must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use, but are sought in furtherance of scholarly (if the request is from an educational institution) or scientific (if the request is from a non-commercial scientific institution) research. Requesters must reasonably describe the records sought.

c. Requesters who are Representatives of the News Media—Agencies shall provide documents to requesters in this category for the cost of reproduction alone, excluding charges for the first 100 pages. To be eligible for inclusion in this category, a requester must meet the criteria in Section 6j above, and his or her request must not be made for a commercial use. In reference to this class of requester, a request for records supporting the news dissemination function of the requester shall not be considered to be a request that is for a commercial use. Thus, for example, a document request to the Department of Justice by a newspaper for records relating to the investigation of a defendant in a current criminal trial of public interest could be presumed to be request from an entity eligible for inclusion in this category and entitled to records for the cost of reproduction alone. Requesters must reasonably describe the records sought.

d. All Other Requesters—Agencies shall charge requesters who do not fit into any of the categories above fees which recover the full reasonable direct cost of searching for and reproducing records that are responsive to the request, except that the first 100 pages of reproduction and the first two hours of search time shall be furnished without charge. Moreover, requests from record subjects for records about themselves filed in agencies' systems of records will continue to be treated under the fee provisions of the Privacy Act of 1974 which permit fees only for reproduction. Requesters must reasonably describe the records sought.

9. *Administrative Actions to Improve Assessment and Collection of Fees*—Agencies shall ensure that procedures for assessing and collecting fees are applied consistently and uniformly by all components. To do so, agencies should amend their agency-wide FOIA regulations to conform to the provisions of this Fee Schedule and Guidelines, especially including the following elements:

a. *Charging Interest—Notice and Rate*. Agencies may begin assessing interest charges on an unpaid bill starting on the 31st day following the day on which the billing was sent. Agencies should ensure that their accounting procedures are adequate to properly credit a requester who has remitted the full amount within the time period. The fact that the fee has been received by the agency, even if not processed, will suffice to stay the accrual of interest. Interest will be at the rate prescribed in Section 3717 of Title 31 U.S.C. and will accrue from the date of the billing.

b. *Charges for Unsuccessful Search*. Agencies should give notice in their regulations that they may assess charges for time spent searching, even if the agency fails to locate the records or if records located are determined to be exempt from disclosure. In practice, if the agency estimates that search charges are likely to exceed $25, it shall notify the requester of the estimated amount of fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. Such a notice shall offer the requester the opportunity to confer with agency personnel with the object of reformulating the request to meet his or her needs at a lower cost.

c. *Aggregating Requests*. Except for requests that are for a commerical use, an agency may not charge for the first two hours of search time or for the first 100 pages of reproduction. However, a requester may not file multiple requests at the same time, each seeking portions of a document or documents, solely in order to avoid payment of fees. When an agency reasonably believes that a requester or, on rare occasions, a group of requesters acting in concert, is attempting to break a request down into a series of requests for the purpose of evading the assessment of fees, the agency may aggregate any such requests and charge accordingly. One element to be considered in determining whether a belief would be reasonable is the time period in which the requests have occurred. For example, it would be reasonable to presume that multiple requests of this type made within a 30-day period had been made to avoid fees. For requests made over a longer period, however, such a presumption becomes harder to sustain and agencies should have a solid basis for determining that aggregation is warranted in such cases. Agencies are cautioned that before aggregating requests from more than one requester, they must have a concrete basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees. In no case may agencies aggregate multiple requests on unrelated subjects from one requester.

d. *Advance Payments.* Agencies may not require a requester to make an advance payment, i.e., payment before work is commenced or continued on a request, unless:

(1) The agency estimates or determines that allowable charges that a requester may be required to pay are likely to exceed $250. Then, the agency should notify the requester of the likely cost and obtain satisfactory assurance of full payment where the requester has a history of prompt payment of FOIA fees, or require an advance payment of an amount up the full estimated charges in the case of requesters with no history of payment; or

(2) A requester has previously failed to pay a fee charged in a timely fashion (i.e., within 30 days of the date of the billing), the agency may require the requester to pay the full amount owed plus any applicable interest as provided above or demonstrate that he has, in fact, paid the fee, and to make an advance payment of the full amount of the estimated fee before the agency begins to process a new request or a pending request from that requester.

When an agency acts under subparagraphs (1) or (2) above, the administrative time limits prescribed in subsection (a)(6) of the FOIA (i.e., 10 working days from receipt of initial requests and 20 working days from receipt of appeals from initial denial, plus permissible extensions of these time limits) will begin only after the agency has received fee payments described above.

e. *Effect of the Debt Collection Act of 1982* (Pub. L. 97-365). Agencies' FOIA regulations should contain procedures for using the authorities of the Debt Collection Act, including disclosure to consumer reporting agencies and use of collection agencies, where appropriate, to encourage repayment.

10. *Agencies' Required Implementing Actions*—Section 1804(b)(1) of the Freedom of Information Reform Act requires agencies to promulgate final regulations in conformance with OMB's schedule and guidelines no later than the 180th day following enactment: April 25, 1987.

James C. Miller III,

Director.

[FR Doc. 87-6851 Filed 3-26-87; 8:45 am]

BILLING CODE 3110-01-M

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 16

[Order No. 1213-87]

Department of Justice Fee Regulation Implementing Fee and Fee Waiver Provisions of Freedom of Information Reform Act of 1986

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This notice constitutes the final revision of a procedural regulation of the Department of Justice, 28 CFR 16.10, setting forth the fees to be charged under the Freedom of Information Act ("FOIA"), 5 U.S.C. 552, in light of the new fee provisions of the Freedom of Information Reform Act of 1986 (Pub. L. No. 99-570, section 1803). The fee provisions conform to the Uniform Freedom of Information Act Fee Schedule and Guidelines promulgated by the Office of Management and Budget, 52 FR 10011 (March 27, 1987) ("OMB Fee Guidelines"). Additionally, as is required by the amended Act, this final revision contains procedures and guidelines for determining when such fees should be waived or reduced.

EFFECTIVE DATE: October 2, 1987.

FOR FURTHER INFORMATION CONTACT: Richard L. Huff or Daniel J. Metcalfe.

Co-Directors, Office of Information and Privacy, United States Department of Justice, Room 7238, Washington, DC 20530 ((202) 633-3642).

SUPPLEMENTARY INFORMATION: On June 18, 1987, the Department of Justice published a proposed FOIA fee schedule, in conformity with the OMB Fee Guidelines, which included procedures and guidelines for determining when such fees should be waived or reduced. 52 FR 22785 (June 18, 1987); 52 FR 24583 (July 1, 1987) (correcting error in printing). Public comment on the proposed regulation was invited, with the comment period extending to July 18, 1987.

Analysis of Comments Received

A total of five comments were postmarked or received within the comment period. Comments were received from the following:

Society of Professional Journalists/Sigma Delta Chi
Reporters Committee for Freedom of the Press
Public Citizen Litigation Group
Mr. Edward H. Kohn
Mr. Dan Fiduccia

The comments are addressed below sequentially according to the specific subsections of the regulation to which they apply.

1. *Fees in general (§ 16.10(a)).* One commenter questioned the inclusion of language requiring components to collect all applicable fees before making copies of requested records available to a requester. Such language, however, is entirely consistent with subsection (a)(3) of the Act, which states that agencies are not required to make records available to a requester unless the request is made "in accordance with published rules stating the * * * fees (if any), and procedures to be followed * * *." The statute thus specifically predicates the release of disclosable records upon the payment of any applicable fees. Routinely requiring requesters to pay assessed fees before receiving what has been purchased also comports with sound business practice and protects the government and the taxpayers from possible loss of revenue. Further, this requirement does not constitute an impermissible "advance payment," contrary to the commenter's suggestion. As stated in § 16.10(g)(3), payment owed for work already completed is not an advance payment. Rather, an "advance payment," as addressed in new subsection (a)(4)(A)(v) of the Act, refers to payments requested by agencies before any work is begun on a request, where either the requester has previously failed to pay properly assessed fees in a timely manner or the agency has estimated that the total fee will exceed $250.00.

2. *Search charges (§ 16.10(b)(1)).* One commenter objected to what was perceived to be an incorrect treatment of searches conducted by computer, stating that the two hours of search time without charge that is provided for in new subsection (a)(4)(A)(iv)(II) should not be limited to manual searches. It was not the Department's intent to foreclose the applicability of that new subsection to searches conducted by computer, nor did it in fact do so. Indeed, § 16.10(c)(2)(ii), which addresses the rule that certain requesters shall receive the first two hours of search without charge, specifically includes the phrase, "or its cost equivalent," in accordance with the language of the provision addressing this point in the OMB Fee Guidelines. *See* OMB Fee Guidelines, sec. 7f, 52 FR 10011, 10018 (March 27, 1987). This provides for the cost equivalent of two hours of manual search to be applied in the context of a computer search; in order to make this unquestionably clear, additional language to this effect is now inserted into § 16.10(b)(1)(C) as well. Contrary to a further comment, however, it is not reasonable to conclude that Congress intended that the "free two hours of search time" provision be applied indiscriminately to computer searches in the same way as to manual searches; if such were the case, then search fees would rarely, if ever, be assessed. Indeed, most computer searches can be completed in far less than two hours, yet the cost of computer search time is far greater per unit of time than the cost of manual search.

One commenter also objected to the provision for charging requesters for unsuccessful searches, asserting that this might intimidate potential requesters. Yet the statute clearly provides for the recovery of search costs, where applicable, without any such reservation. *See* 5 U.S.C. 552(a)(4)(A)(ii). Moreover, the OMB Fee Guidelines, which already have been subject to notice and comment and are binding on all federal agencies subject to the FOIA, specifically provide for the recovery of costs for unsuccessful searches. *See* OMB Fee Guidelines, sec. 9b, 52 FR 10011, 10019 (March 27, 1987). Additionally, as such costs are incurred by the Department regardless of whether a search results in the discovery of responsive records, the Department believes that there is no reason for it, and in turn the taxpayers, to absorb these costs in lieu of the requester.

Lastly, two commenters expressed concern that this section does not provide requesters with an opportunity to confer with Department personnel in order to reformulate requests at a lower cost. These comments reflect a misunderstanding of the relationship of this section to § 16.10(e), which specifically addresses the subjects of anticipated fees and reformulation of requests. In all cases, whether the anticipated fees concern search charges or duplication charges, § 16.10(e) provides that if the anticipated fee exceeds $25.00, the component shall notify the requester of the actual or estimated fee (unless the requester has previously indicated his willingness to pay any fee assessed) and provide the requester with an opportunity to confer with Department personnel in order to reformulate the request at a lower cost.

3. *Review charges (§ 16.10(b)(3)).* One commenter objected to the provision for charging review costs for a subsequent review of records previously withheld pursuant to an exemption determined to no longer apply. However, this provision was taken directly from the OMB Fee Guidelines. *See* OMB Fee Guidelines, sec. 7c, 52 FR 10011, 10018 (March 27, 1987). Furthermore, the Department believes that such review properly qualifies under the statute as an "initial examination" because the record is being reviewed for the first time with respect to other potentially applicable exemptions. If such review costs were precluded, then at the first time at which records are processed components would be compelled to review them for the applicability of all possible exemptions, even though at the time of processing one exemption clearly covered all of the records or portions in question. Such an approach would unnecessarily increase review costs to requesters.

4. *Limitations on charging fees (§ 16.10(c)).* One commenter approved of the provision for not collecting a fee which is $8.00 or less, but questioned how the figure was calculated. The minimum charge of $8.00, set forth in § 16.10(c)(3), is based upon the Justice Management Division's estimated average cost of processing a check—including the cost of the salary of the employee processing the check (plus 16%, as provided for in the OMB Fee Guidelines), as well as the cost of the system used.

5. *Waiver or reduction of fees (§ 16.10(d)).* All five commenters addressed this section, expressing concern that the factors to be considered require components to make speculative and subjective value

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judgments regarding the subject of a request and its value to the public. While the Department appreciates that the statutory standard governing the waiver or reduction of FOIA fees is phrased largely in general evaluative terms, the factors set forth by the Department are taken directly from the statute's plain language. It is entirely in keeping with well-recognized principles of statutory construction that each word of the statutory standard be given some effect, and this is precisely what the Department has done through its six factors. Furthermore, in its New FOIA Fee Waiver Policy Guidance issued to all agencies by the Department's Office of Legal Policy on April 2, 1987, the Department specifically cautioned against the imposition of improper value judgments by those deciding fee waiver requests. *See FOIA Update*, Vol. VIII, No. 1, at 8 (1987). The Department's components will make every effort to apply these factors, under the statutory standard, in an objective manner.

In order to ensure that components have all the necessary information that must be considered when applying these factors, the Department has added paragraph (d)(5), which requires a requester seeking a fee waiver or reduction to address each of the factors listed in paragraphs (d) (2) and (3), as they apply to the particular request for records in question. Contrary to the suggestion of three of the commenters, the requirement that such information be submitted in support of a fee waiver request is not affected by the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* The Office of Information and Regulatory Affairs of the Office of Management and Budget, which holds responsibility for the Paperwork Reduction Act's implementation, has determined that FOIA fee regulation requirements that requesters submit information in support of their fee waiver and fee limitation claims are not "information collection requests" within the meaning of that Act. *See also* 5 CFR 1320.7(c) (1987).

All of the commenters also urged the Department to establish certain categories of requesters or types of requests which would be presumptively entitled to a fee waiver. The Department declines to do this, firmly believing that each request must be judged on its own merits and that the provisions of § 16.10(d) accurately reflect the appropriate considerations guiding agency fee waiver determinations. The fee waiver provision of the FOIA, as amended, 5 U.S.C. 552(a)(4)(A)(iii), does not provide for any such presumptions for categories of requesters, although the limitations on duplication, search, and review fees under subsection (a)(4)(A)(ii) of the Act do distinguish among categories of requesters. The fee waiver provision in subsection (a)(4)(A)(iii), therefore, must be applied on a case-by-case basis for all requesters.

6. *Notice of anticipated fees in excess of $25.00 (§ 16.10(e)).* One commenter objected to the provision that a request will be deemed not to have been received until the requester has agreed to pay the total anticipated fee. However, this provision is not different in this regard than that which existed previously in the FOIA fee regulations of the Department, as well as those of other agencies. Such time-tolling FOIA fee provisions, which are based upon sound principles of responsible cost recovery and are aimed at providing the government with some assurance of reimbursement before it expends the effort and cost to process a request, have been upheld by the courts. *See, e.g., Irons v. FBI*, 571 F. Supp. 1241, 1243 (D. Mass. 1983).

7. *Advance payments (§ 16.10(g)).* One commenter objected to the requirement of an advance payment from a first-time requester, where the total fee to be assessed is estimated to exceed $250.00, and another commenter objected to the suspension of the statutory time limits for responding to a request while an advance payment is being sought. However, each of these provisions was taken directly from the OMB Fee Guidelines. *See* OMB Fee Guidelines, sec. 9d, 52 FR 10011, 10020 (March 27, 1987). The Department firmly believes that they correctly implement the statutory provision concerning advance payments.

8. *Charging interest (§ 16.10(h)).* One commenter questioned the legal basis for this provision, asserting that there is no statutory authorization for assessing interest charges in connection with FOIA fees. However, this provision was taken directly from the OMB Fee Guidelines. *See* OMB Fee Guidelines, sec. 9a, 52 FR 10011, 10019 (March 27, 1987). The statutory authority for assessing such interest is 31 U.S.C. 3717. Additionally, in accordance with section 9e of the OMB Fee Guidelines, 52 FR 10020, language has been inserted which further addresses collection procedures under the Debt Collection Act of 1982, Pub. L. No. 97–365 (Oct. 25, 1982).

9. *Definitions (§ 16.10(j)).* All five commenters objected to certain of the definition contained in this section, especially that of "representative of the news media." However, once again, these definitions were drawn from the OMB Fee Guidelines, which were made final only after a period of public notice and comment during which concerns such as those raised by these commenters were considered. *See* OMB Fee Guidelines, sec. 6g–6j, 52 FR 10011, 10017–18 (March 27, 1987); *see also* 52 FR 10013–15 (OMB analysis of comments on definitions). The Department is required by the amended Act to conform its fee schedule, which includes these definitions of categories of requesters, to the OMB Fee Guidelines. Furthermore, the Department firmly believes that these definitions, including that of "representative of the news media," properly implement the statutory terms of the amended Act.

These rules do not constitute "major rules" within the meaning of Executive Order No. 12291 (Improving Government Regulations). The requirements of the Regulatory Flexibility Act, 5 U.S.C. 605(b), do not apply.

List of Subjects in 28 CFR Part 16

Freedom of Information.

Accordingly, under the authority vested in me by 28 U.S.C. 509 and 510, and 5 U.S.C. 301 and 552, Part 16 of Chapter I of Title 28 of the Code of Federal Regulations is amended as follows:

PART 16—(AMENDED)

1. The authority citation for Part 16 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g), 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717, 9701.

2. Section 16.10 is revised to read as follows:

§ 16.10 Fees.

(a) *In general.* Fees pursuant to 5 U.S.C. 552 shall be assessed according to the schedule contained in paragraph (b) of this section for services rendered by components in responding to and processing requests for records under this subpart. All fees so assessed shall be charged to the requester, except where the charging of fees is limited under paragraph (c) of this section or where a waiver or reduction of fees is granted under paragraph (d) of this section. A component shall collect all applicable fees before making copies of requested records available to a requester. Requesters shall pay fees by check or money order made payable to the Treasury of the United States.

(b) *Charges.* In responding to requests under this subpart, the following fees shall be assessed, unless a waiver or reduction of fees has been granted pursuant to paragraph (d) of this section:

(1) *Search.* (i) No search fee shall be assessed with respect to requests by educational institutions, noncommercial scientific institutions, and representatives of the news media (as defined in paragraphs (j)(6), (j)(7) and (j)(8) of this section, respectively). Search fees shall be assessed with respect to all other requests, subject to the limitations of paragraph (c) of this section. Components may assess fees for time spent searching even if they fail to locate any respective record or where records located are subsequently determined to be entirely exempt from disclosure.

(ii) For each quarter hour spent by clerical personnel in searching for and retrieving a requested record, the fee shall be $2.25. Where a search and retrieval cannot be performed entirely by clerical personnel—for example, where the identification of records' within the scope of a request requires the use of professional personnel—the fee shall be $4.50 for each quarter hour of search time spent by such professional personnel. Where the time of managerial personnel is required, the fee shall be $7.50 for each quarter hour of time spent by such managerial personnel.

(iii) For computer searches of records, which may be undertaken through the use of existing programming, requesters shall be charged the actual direct costs of conducting the search, although certain requesters (as defined in paragraph(c)(2) of this section) shall be entitled to the cost equivalent of two hours of manual search time without charge. These direct costs shall include the cost of operating a central processing unit for that portion of operating time that is directly attributable to searching for records responsive to a request, as well as the costs of operator/programmer salary apportionable to the search (at no more than $4.50 per quarter hour of time so spent). A component is not required to alter or develop programming to conduct a search.

(2) *Duplication.* Duplication fees shall be assessed with respect to all requesters, subject to the limitations of paragraph (c) of this section. For a paper photocopy of a record (no more than one copy of which need be supplied), the fee shall be $0.10 per page. For copies produced by computer, such as tapes or printouts, components shall charge the actual direct costs, including operator time, of producing the copy. For other methods of duplication, components shall charge the actual direct costs of duplicating a record.

(3) *Review.* (i) Review fees shall be assessed with respect to only those requesters who seek records for a commercial use, as defined in paragraph (j)(5) of this section. For each quarter hour spent by agency personnel in reviewing a requested record for possible disclosure, the fee shall be $4.50, except that where the time of managerial personnel is required, the fee shall be $7.50 for each quarter hour of time spent by such managerial personnel.

(ii) Review fees shall be assessed only for the initial record review, *i.e.*, all of the review undertaken when a component analyses the applicability of a particular exemption to a particular record or record portion at the initial request level. No charge shall be assessed for review at the administrative appeal level of an exemption already applied. However, records or record portions withheld pursuant to an exemption that is subsequently determined not to apply may be reviewed again to determine the applicability of other exemptions not previously considered. The costs of such a subsequent review are properly assessable, particularly where that review is made necessary by a change of circumstances.

(c) *Limitations on charging fees.* (1) No search or review fee shall be charged for a quarter-hour period unless more than half of that period is required for search or review.

(2) Except for requesters seeking records for a commercial use (as defined in paragraph (j)(5) of this section), components shall provide without charge—

(i) The first 100 pages of duplication (or its cost equivalent), and

(ii) The first two hours of search (or its cost equivalent).

(3) Whenever a total fee calculated under paragraph (b) of this section is $8.00 or less, no fee shall be charged.

(4) The provisions of paragraphs (c)(2) and (3) of this section work together. For requesters other than those seeking records for a commercial use, no fee shall be charged unless the cost of search in excess of two hours plus the cost of duplication in excess of 100 pages exceeds $8.00.

(d) *Waiver or reduction of fees.* (1) Records responsive to a request under 5 U.S.C. 552 shall be furnished without charge or at a charge reduced below that established under paragraph (b) of this section where a component determines, based upon information provided by a requester in support of a fee waiver request or otherwise made known to the component, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester. Requests for a waiver or reduction of fees shall be considered on a case-by-case basis.

(2) In order to determine whether the first fee waiver requirement is met—*i.e.*, that disclosure of the requested information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government—components shall consider the following four factors in sequence:

(i) *The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government."* The subject matter of the requested records, in the context of the request, must specifically concern identifiable operations or activities of the federal government—with a connection that is direct and clear, not remote or attenuated. Furthermore, the records must be sought for their informative value with respect to those government operations or activities; a request for access to records for their intrinsic informational content alone will not satisfy this threshold consideration.

(ii) *The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities.* The disclosable portions of the requested records must be meaningfully informative on specific government operations or activities in order to hold potential for contributing to increased public understanding of those operations and activities. The disclosure of information that already is in the public domain, in either a duplicative or a substantially identical form, would not be likely to contribute to such understanding, as nothing new would be added to the public record.

(iii) *The contribution to an understanding of the subject by the public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding."* The disclosure must contribute to the understanding of the public at large, as opposed to the individual understanding of the requester or a narrow segment of interested persons. A requester's identity and qualifications—*e.g.*, expertise in the subject area and ability and intention to effectively convey information to the general public—should be considered. It reasonably may be presumed that a representative of the news media (as defined in paragraph (j)(8) of this section) who has access to the means of public dissemination readily will be able to satisfy this consideration. Requests from libraries or other record repositories (or requesters who intend merely to disseminate information to such institutions) shall be analyzed, like those of other requesters, to identify a particular person who represents that he actually will use the requested information in scholarly or other analytic work and then disseminate it to the general public.

(iv) *The significance of the contribution to public understanding: Whether the disclosure is likely to contribute "significantly" to public understanding of government operations or activities.* The public's understanding of the subject matter in question, as compared to the level of public understanding existing prior to the disclosure, must be likely to be enhanced by the disclosure to a significant extent. Components shall not make separate value judgments as to whether information, even though it in fact would contribute significantly to public understanding of the operations or activities of the government, is "important" enough to be made public.

(3) In order to determine whether the second fee waiver requirement is met—*i.e.*, that disclosure of the requested information is not primarily in the commercial interest of the requester—components shall consider the following two factors in sequence:

(i) *The existence and magnitude of a commercial interest: Whether the requester has a commercial interest that would be furthered by the requested disclosure.* Components shall consider all commercial interests of the requester (with reference to the definition of "commercial use" in paragraph (j)(5) of this section), or any person on whose behalf the requester may be acting, but shall consider only those interests which would be furthered by the requested disclosure. In assessing the magnitude of identified commercial interests, consideration shall be given to the role that such FOIA-disclosed information plays with respect to those commercial interests, as well as to the extent to which FOIA disclosures serve those interests overall. Requesters shall be given a reasonable opportunity in the administrative process to provide information bearing upon this consideration.

(ii) *The primary interest in disclosure: Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."* A fee waiver or reduction is warranted only where, once the "public interest" standard set out in paragraph (d)(2) of this section is satisfied, that public interest can fairly be regarded as greater in magnitude than that of the requester's commercial interest in disclosure. Components shall ordinarily presume that, where a news media requester has satisfied the "public interest" standard, that will be the interest primarily served by disclosure to that requester. Disclosure to data brokers or others who compile and market government information for direct economic return shall not be presumed to primarily serve the "public interest."

(4) Where only a portion of the requested records satisfies both of the requirements for a waiver or reduction of fees under this paragraph, a waiver or reduction shall be granted only as to that portion.

(5) Requests for the waiver or reduction of fees shall address each of the factors listed in paragraphs (d) (2) and (3) of this section, as they apply to each record request.

(e) *Notice of anticipated fees in excess of $25.00.* Where a component determines or estimates that the fees to be assessed under this section may amount to more than $25.00, the component shall notify the requester as soon as practicable of the actual or estimated amount of the fees, unless the requester has indicated in advance his willingness to pay fees as high as those anticipated. (If only a portion of the fee can be estimated readily, the component shall advise the requester that the estimated fee may be only a portion of the total fee.) In cases where a requester has been notified that actual or estimated fees may amount to more than $25.00, the request will be deemed not to have been received until the requester has agreed to pay the anticipated total fee. A notice to the requester pursuant to this paragraph shall offer him the opportunity to confer with Department personnel in order to reformulate his request to meet his needs at a lower cost.

(f) *Aggregating requests.* Where a component reasonably believes that a requester or a group of requesters acting in concert is attempting to divide a request into a series of requests for the purpose of evading the assessment of fees, the component may aggregate any such requests and charge accordingly. Components may presume that multiple requests of this type made within a 30-day period have been made in order to evade fees. Where requests are separated by a longer period, components shall aggregate them only where there exists a solid basis for determining that such aggregation is warranted, *e.g.*, where the requests involve clearly related matters. Multiple requests involving unrelated matters shall not be aggregated.

(g) *Advance payments.* (1) Where a component estimates that a total fee to be assessed under this section is likely to exceed $250.00, it may require the requester to make an advance payment of an amount up to the entire estimated fee before beginning to process the request, except where it receives a satisfactory assurance of full payment from a requester with a history of prompt payment.

(2) Where a requester has previously failed to pay a records access fee within 30 days of the date of billing, a component may require the requester to pay the full amount owed, plus any applicable interest (as provided for in paragraph (h) of this section), and to make an advance payment of the full amount of any estimated fee before the component begins to process a new request or continues to process a pending request from that requester.

(3) For requests other than those described in paragraphs (g)(1) and (2) of this section, a component shall not require the requester to make an advance payment, *i.e.*, a payment made before work is commenced or continued on a request. Payment owed for work already completed is not an advance payment.

(4) Where a component acts under paragraphs (g)(1) or (2) of this section, the administrative time limits prescribed in subsection (a)(6) of the FOIA for the processing of an initial request or an appeal, plus permissible extensions of these time limits, shall be deemed not to begin to run until the component has received payment of the assessed fee.

(h) *Charging interest.* Components may assess interest charges on an unpaid bill starting on the 31st day following the day on which the bill was sent to the requester. Once a fee payment has been received by a component, even if not processed, the accrual of interest shall be stayed. Interest charges shall be assessed at the rate prescribed in section 3717 of Title 31 U.S.C. and shall accrue from the date of the billing. Components shall follow the provisions of the Debt Collection Act of 1982, Pub. L. No. 97–365 (Oct. 25, 1982), and its implementing procedures, including the use of consumer reporting agencies, collection agencies, and offset.

(i) *Other statutes specifically providing for fees.* (1) The fee schedule of this section does not apply with respect to the charging of fees under a statute specifically providing for setting the level of fees for particular types of records—*i.e.*, any statute that specifically requires a government entity such as the Government Printing Office or the National Technical Information Service, to set and collect fees for particular types of records—in order to:

(i) Serve both the general public and private sector organizations by conveniently making available government information;

(ii) Ensure that groups and individuals pay the cost of publications and other services that are for their special use so that these costs are not borne by the general taxpaying public;

(iii) Operate an information-dissemination activity on a self-sustaining basis to the maximum extent possible; or

(iv) Return revenue to the Treasury for defraying, wholly or in part, appropriated funds used to pay the cost of disseminating government information.

(2) Where records responsive to requests are maintained for distribution by agencies operating statutorily based fee schedule programs, components shall inform requesters of the steps necessary to obtain records from those sources.

(j) *Definitions.* For the purpose of this section:

(1) The term "direct costs" means those expenditures which an agency actually incurs in searching for and duplicating (and, in the case of commercial use requesters, reviewing) records to respond to a FOIA request. Direct costs include, for example the salary of the employee performing the work (the basic rate of pay for the employee plus 16 percent of that rate to cover benefits) and the cost of operating duplicating machinery. Not included in direct costs are overhead expenses such as costs of space and heating or lighting of the facility in which the records are stored.

(2) The term "search" includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Components shall ensure, however, that searches are undertaken in the most efficient and least expensive manner reasonably possible; thus, for example, components shall not engage in line-by-line search where merely duplicating an entire document would be quicker and less expensive.

(3) The term "duplication" refers to the process of making a copy of a record necessary to respond to a FOIA request. Such copies can take the form of paper copy, microform, audio-visual materials, or machine-readable documentation (*e.g.*, magnetic tape or disk), among others. The copy provided shall be in a form that is reasonably usable by requesters.

(4) The term "review" refers to the process of examining a record located in response to a request in order to determine whether any portion of it is permitted to be withheld. It also includes processing any record for disclosure, *e.g.*, doing all that is necessary to excise it and otherwise prepare it for release, although review costs shall be recoverable even where there ultimately is no disclosure of a record. Review time does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) The term "commercial use" in the context of a request refers to a request from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person on whose behalf the request is made, which can include furthering those interests through litigation. Components shall determine, as well as reasonably possible, the use to which a requester will put the records requested. Where the circumstances of a request suggest that the requester will put the records sought to a commercial use, either because of the nature of the request itself or because a component otherwise has reasonable cause to doubt a requester's stated use, the component shall provide the requester a reasonable opportunity to submit further clarification.

(6) The term "educational institution" refers to a preschool, a public or private elementary or secondary school, an institution of undergraduate higher education, an institution of graduate higher education, an institution of professional education, and an institution of vocational education, which operates a program or programs of scholarly research. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scholarly research.

(7) The term "noncommercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (j)(5) of this section, and which is operated solely for the purpose of conducting scientific research the results of which are not intended to promote any particular product or industry. To be eligible for inclusion in this category, a requester must show that the request is being made as authorized by and under the auspices of a qualifying institution and that the records are not sought for a commercial use but are sought in furtherance of scientific research.

(8) The term "representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances where they can qualify as disseminators of "news") who make their products available for purchase or subscription by the general public. For "freelance" journalists to be regarded as working for a news organization, they must demonstrate a solid basis for expecting publication through that organization; a publication contract would be the clearest proof, but components shall also look to the past publication record of a requester in making this determination. To be eligible for inclusion in this category, a requester also must not be seeking the requested records for a commercial use. In this regard, a request for records supporting the news dissemination function of the requester shall not be considered to be for a commercial use.

(k) *Charges for other services and materials.* Apart from the other provisions of this section, where a component elects, as a matter of administrative discretion, to comply with a request for a special service or materials, such as certifying that records are true copies or sending them other than by ordinary mail, the actual direct costs of providing the service or materials shall be charged.

Dated: August 24, 1987.

Arnold I. Burns,

Acting Attorney General.

[FR Doc. 87-20140 Filed 9-1-87; 8:45 am]

BILLING CODE 4410-01-M

Appendix 5.—Excerpt From "None of Your Business"

NONE OF YOUR BUSINESS

(Government Secrecy in America)

Edited by Norman Dorsen and Stephen Gillers
With an Introduction by Anthony Lewis

A book for the Committee for Public Justice

The Viking Press New York

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The Technology of Secrecy

—by Alan Westin

No analysis of government's secrecy in the 1970s would be complete without considering government's growing use of computer systems. In 1972 an inventory of the federal executive establishment counted 6731 computers. Most of these—5815— were installed in the "Big-Three" computer-using agencies: the Defense Department, the Atomic Energy Commission, and the National Aeronautics and Space Administration. But 916 others were distributed among fifty-two more federal agencies and departments. The largest users were the Departments of Transportation; Commerce; Treasury; Agriculture; Health; Education, and Welfare; and the Veterans Administration. Over $2.4 billion were spent on these federal computing activities, with the equivalent of 124,000 full-time employees involved in federal ADP (Automatic Data Processing) work.[1]

This steadily increasing use of computers by federal executive agencies is paralleled by trends in state, county, and municipal government, and in the operations of special governmental authorities, from school districts to water commissions. Especially among larger agencies, so many records have now been converted to machine-readable form and so many client services and administrative operations are being carried on through computerized procedures that the executive branches of American government have become dependent on their computer systems.[2] In this sense, we are not moving into the computer age; we are already deep in it.

As a result, civil libertarians have begun to worry about the effects such heavy reliance on computers may have on the public's right to know. Putting aside science-fiction approaches ("The machines will take over!"), there are fears that computerization may:

— Make it harder for the average citizen, public-interest group, etc., to know what information is in automated files and how it is used, because the specialized procedures of ADP are not yet well known.

— Create delays in furnishing information, as agencies cite data-conversion problems and system "bugs" as reasons why they cannot furnish information in computer storage.

— Make it more difficult for persons to "browse" in public records after these are converted from traditional, eye-readable registers, kept on open shelves, to storage on computer tapes or discs, available only on special call.

— Create large computer data banks whose software for extracting information is geared to what agency directors wish to see produced, making it a costly special effort to produce information sought by public-access groups.

— And lead to significant reliance by government officials on computer-based decision-making aids (models, simulation, etc.), whose use is not made known to the public.

Such concerns about computers and secrecy, unlike similar ones about the effects of computerization on individual privacy, have *not* yet received much serious attention. There have been no empirical investigations of computers and secrecy, no significant treatment of the issue by Congressional committees, and even no exploratory essays on the topic. I believe the public's right to know, in an era of increasing computerization, will suffer badly if we allow this inattention to continue.

To put this inquiry into proper perspective, two pieces of groundwork are needed: 1) the legal and political settings of government secrecy must be understood, in order to compare public access in manual systems with computerized record systems; and 2) the basic patterns of computer usage in those government agencies that are automating and how the computers are actually used.

I The Precomputer Setting of Government Secrecy Issues

The public's right to know (and thereby control) what the executive branch of government is doing is a pivotal element in the American constitutional scheme. The Framers believed that executive affairs were not the private preserve of a President or his agents, in the classic mode of royal households, but an instrument of popular government, to be conducted mainly in public view or subject to public inspection. To carry out this policy, Congress was given power to investigate and oversee the operations of executive agencies (with authority to compel disclosure of information). American courts could compel the production of information by executive agencies whenever necessary to insure a fair trial to defendants in criminal prosecutions or to test the rational basis of government regulatory action involving property rights or personal liberties.

Under a combination of common law and statutory rules, the general public had a right of access to government information. These rules provided that certain records kept by government (for example, tax and land registers) were public documents, open to inspection by anyone. Other records could be inspected by persons with a particular, legitimate interest in seeing them (such as a parent inspecting a child's official school record). Access by the press and by individuals without a specific legal interest would generally depend on the wording of state and federal statutes.[3]

Generally, the courts would balance claims to access by Congress, litigants, and the public against what was usually termed the broad public interest in protecting the integrity of the governmental process. This produced rulings exempting from disclosure such matters as state secrets, investigative files, internal memoranda by agency officials, information obtained from citizens under promise of confidentiality, and certain information protected by a vague but real doctrine called executive privilege. These rulings show that demands to make government information public, central as this is to the citizen's knowledge and control of public affairs, can conflict with two other values of democratic society: the right of privacy of individuals about whom sensitive information is stored in government files (such as census, tax, medical and social-services records), and the need of all formal organizations, governmental or private, for periods of *temporary* privacy, in which to gather confidential information, solicit frank advice, conduct secret negotiations, formulate positions, and reach executive decisions.[4]

In general, statutes and judicial rulings prior to World War II were very generous in accepting government claims that disclosing certain information would jeopardize the orderly and efficient operations of government. But since World War II, there has been increasing government activity in defense and social-welfare areas and strong pressures from the press, Congress, and public-interest groups to make government more responsive. The clear trend has been toward opening up executive-agency files to public access. The single most important step to date was passage of the federal Freedom of Information Act and various state counterparts. The Act has been analyzed in two earlier papers. It is important to recognize, however, that computerization began to spread through the American government establishment at a time when there were disputes over 1) what information should be open to public access under freedom of information laws and 2) what constitutes prompt, complete, and reasonably priced compliance with demands for information to which the public was entitled. Whether computers, adding machines, or 3-by-5 cards are used to manage information is separate from the policy issue. But a basic factual question is whether the move to automated files and procedures has made it easier, harder, or has had no significant effect on compliance with existing law.

II General Patterns of Computer Usage and the Organizational Impact in Government

Although, to the public, a computer is a computer is a computer, patterns of computer usage vary widely in government, from department to department, even from bureau to bureau within a department. In organizational terms, this is because each unit starts with records and files unique to its mission, with distinct functions to perform through its collection and use of information, and with distinct styles of management (including attitudes toward providing information to the public). Furthermore, government officials have a wide range of choices about technology—what kind of computer hardware to adopt and software to buy or develop; which files to automate first; what aids to decision-making or management-reporting to attempt through computer resources. Few centralized controls (either executive or legislative) have yet attempted to set uniform guidelines for computerization at a given level of government. So automation today is largely a process of agency-by agency decision.

Nevertheless, there are some patterns to computerization in government. These help in analyzing computer impact on freedom-of-information problems.

Computer usage enters most organization through payroll and financial applications, then moves into automation of the largest and most frequently used files. In addition, computers are used to produce various management reports and statistical summaries. This is the stage that most agencies are currently at in computerization. Some departments or bureaus, however, have begun to develop multifile applications, merging several files into a data bank in a particular subject area (social services, for example). A few cities and counties are attempting to create a jurisdiction-wide data bank containing files from many different agencies (e.g.,police, tax, welfare, health). In addition, government agencies are using computers to augment data-sharing among government jurisdictions at the same level (police information systems in metropolitan areas) or at different levels (the FBI's National Crime Information Center or the National Drivers Registration system).

A report by the National Academy of Sciences Project on Computer Data Banks, a three-year study into computers and privacy, found that, so far, computer use has reproduced rules and practices of the manual era rather than transforming them. Computer use has not yet led to the collection of more detailed and intrusive information about people, to sharing data with different types of agencies than had been the practice before computerization, or to any lessening of the individual citizen's ability to know and contest the information that was being collected about him or her in a given file. Whatever rules the agency had before computerization (whether respectful of privacy and due process or hostile to them) continue to be reflected in the computerized operations. Where laws or public values have changed secrecy rules, the NAS project found that managers of computerized systems were as able to comply (and were complying) as were managers with manual files. And, highly intrusive new record systems created during the past decade, such as the Army's monitoring of civilian protest groups, were either wholly manual record systems or were being aided only marginally by computers.

The NAS report also showed that there are no fully automated government agencies today. In every department or bureau, some files remain wholly manual. Some decisions are made after examining records or conducting interviews and negotiations. Some reports are prepared and distributed without machine assistance. Even when a file has been automated, there is often a back-up system with the paper or card records that provided the initial entry; or a microfilm or microfiche record is created for archival use in addition to the primary storage on computer tape or discs. The general rule, for reasons of ease and cost in technological usage, is that files which contain the most objective and easily recorded information and which are needed and consulted most frequently will be the first automated.

At the other end of the computerization process, the files *least* likely to be automated are those with extensive narrative material, highly subjective reports, and sensitive information.

The most important results of computerization discovered by the NAS study were more complete and up-to-date files. There was more analysis and use of information already in the files. Automation produces greater accuracy in some areas of record-keeping, but also introduces the possibility (and likelihood) of other errors. Computerization is leading to the creation of larger and more extensive networks of information-sharing groups. Computers are making possible the creation of some very large data banks, which would probably not have been built, or built as rapidly, but for computer resources.

What the NAS study and other studies [8] report is that computerization has not solved certain problems important to privacy and secrecy issues. Computers do not eliminate the power struggles over control of information within an organization or the self-protective manipulation of information among "cooperating" agencies (whether in intelligence, business regulation, or taxation). The competitions and conflicts of the American federal system have been faithfully mirrored in computer usage so that in any given geographic area, separate computer systems will be maintained by municipalities, counties, special authorities, state agencies, and federal bodies covering services to the same population. There has been no amalgamation of different government functions or jurisdictions into a common computer management.

Studies of computer use reveal that, except for funding, legislative bodies have not supervised the way executive agencies have carried out computerization. This lack of oversight extends to privacy impact, impact of public access to information, and provisions for citizen participation.

Finally, several popular notions about how computerization affects government operations should be set aside as red herrings. They confuse questions of public policy with changes in the technological execution of those policies. One is that computers foster the creation of secret files. Government agencies have for centuries been able to maintain secret files about people or transactions so that their existence was unknown to the public. Using index cards, file folders, microfilm, and other precomputer storage media, millions of records were efficiently maintained in these government files. Using the mails, teletype, telephone, and other means of precomputer data communications, some file systems collected and distributed information on a nationwide basis among hundreds of local and regional offices. Computers are not an essential element in the creation of either secret files, or secret national data networks. There is no evidence that computers are making it significantly easier for government to create or manage secret files. Agencies creating secret computerized files still face the problems of hiding fund expenditures from legislative or press view, preventing leaks by defecting employees, and keeping the sources of data secret when reports are produced and used elsewhere in government. The fundamental issues remain: should any secret files be permitted by law? How can the public discover unlawful secret files, whatever the form of data storage and communication?

A second red herring is that computers substantially facilitate government manipulation of information. For centuries, some government officials have lied. For centuries, there have been subordinates who falsified reports about what was happening in the field—in warfare, diplomatic developments, social trends—in order to provide superiors with the reports they demanded. Computers continue the capacity for these deceptions. Inaccurate reports about "safe" villages in South Vietnam, contributed during our pacification policy in the mid-1960s, when into computer systems. These produced the glowing reports of success the Johnson administration wanted to hear. Similarly, false reports sent by base commanders from Cambodia in 1969–1970, about where American bombers were flying their sorties, enabled the Defense Department's computers to print out incorrect data. These were communicated to Congress, in keeping with the policy of secret bombings ordered by President Nixon and Secretary of Defense Laird. Computer systems simply represent another tool officials can use to falsify or distort events or conditions. Computers did not create this capacity, nor do they ease the difficult task of government critics of learning the facts and exposing manipulation of data.

Although computers are not *creating* or inevitably leading to secret files or falsification of information, they do have important physical and administrative consequences that may require new legal rules and supervisory mechanisms to prevent abusive secrecy practices. The goal is to identify these consequences and to frame responsive policies for them.

This brief portrait of computer use by government presents only highlights of the current situation. But it provides a framework for my main question—how computers affect compliance with freedom-of-information laws.

III Computer Impact on Public Access: Reports from the Information-Holders and Information-Seekers

To gather data about computer impact, I sent letters of inquiry and conducted follow-up interviews with two groups: the information-holders and the information-seekers.

I wrote to twenty-eight federal bureaus, agencies, or departments in early 1973, asking them, first, whether their use of computers made it harder or easier to comply with freedom-of-information laws, or had no significant effect. This question was followed with more detailed questions about possible differences with respect to the character of groups seeking access, the type of inquiry, effects on the costs of compliance, and similar matters. Specific examples were requested.

Twenty-three of the twenty-eight agencies sent full replies. Some provided a general report on their computer operations, usually where the agency was a relatively small or single-purpose one or where its computerization was limited.* Other agencies, usually the larger federal departments, concluded that no composite reply could reconcile the differences among various units. These agencies provided individual responses from their units.**

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* Agencies furnishing a general reply were the Atomic Energy Commission, Department of Agriculture, Civil Aeronautics Board, Department of Housing and Urban Development, National Labor Relations Board, Federal Communications Commission, Federal Power Commission, and Federal Trade Commission.

** Agencies supplying responses from various constituent units were the *Department of Commerce* (Patent Office, Social and Economic Statistics Administration, Assistant Secretary for Administration, Office of Organization and Management Systems), *Department of Defense* (United States Air Force, Office of the Secretary), *Department of Health, Education, and Welfare* (Social Security Administration, National Institute of Education, Office of Education, National Institutes of Health), *Department of Justice* (Bureau of Narcotics and Dangerous Drugs, Immigration and Naturalization Service, Law Enforcement Assistance Administration, Federal Bureau of Investigation, Assistant Attorney General for Administration), *Department of Labor* (Office of the Secretary, Occupational Safety and Health Administration), *Department of*

In all, there were commentaries from forty-three offices, bureaus, agencies, and departments of the federal government. Of course, these present a manager's view. One does not expect official spokesmen to respond that they are not complying with the law. If computer systems or temporary problems of computer operations were making compliance with access policies slower, more costly, or less complete than under manual procedures, the replies would be likely to repress this. Finally, the replies did not present a set of answers for each major information file maintained by a given bureau or agency. So we do not have a comprehensive picture of practice in each agency.

An attempt to verify managerial views of computer impact on public access would require study of precomputer practices, analysis of procedures in the automated files, and detailed comparisons. This was not possible. Instead, I compensated for the self-protective tendencies in managerial reporting by sending letters and conducting interviews with information-seekers. I wrote to those who regularly battle to pry information from government agencies.

I wrote to spokesmen for five categories of groups. The groups, and the number in each responding with substantive replies, were:

General Counsel to Congressional committees	6
Public-interest law firms and research groups	8
"Guardian groups" (civil rights, civil liberties, consumer interest, women's rights)	10

State (Record Services Division, Agency for International Development), *Department of Transportation* (Office of the Secretary-Director for Management Systems, United States Coast Guard, Federal Aviation Administration, Federal Highway Administration, National Transportation Safety Board, Office of Policy, Plans, and International Affairs, Office for Environment, Safety, and Consumer Affairs, Office of Systems Development and Technology, National Highway Traffic Safety Administration, Office of the General Counsel, Urban Mass Transportation Administration), and *Veterans Administration* (Department of Medicine and Surgery, Department of Veterans Benefits, Information Service, Controller, Department of Data Management).

Freedom-of-information committees of media associations	5
Investigative writers	6

These thirty-five groups were asked whether they found that automation made a difference in efforts to obtain information from executive agencies. I asked for specific instances in which the presence of computerization had made information retrieval easier or harder.

This section contains reports on computerization and public access by spokesman for the two "opposing camps" in the freedom-of-information contest. My main analysis on the developing trends and what needs to be done to advance the cause of public access follows later.

1 *Reports from the federal information-holders.* About a fifth of the agencies report that computerization has not progressed far enough to have an effect on compliance with freedom-of-information laws. They note that computerization has been limited to payroll, financial, and other housekeeping operations not subject to disclosure. Principal files subject to query under freedom-of-information laws remain in manual form. Among those reaching this conclusion were the State Department, the Federal Power Commission, the Federal Trade Commission, the Immigration and Naturalization Service, and the Federal Bureau of Investigation.

The FBI, for example, responded that the Bureau has automated "payroll, fiscal, and some selected FBI personnel data" used only for "internal administrative purposes." "Investigative files, as such, have not been computerized." Legal rules restrict access to wanted-person and stolen-property data in the National Crime Information Center to law-enforcement agencies, state licensing authorities, and certain federally insured banks. Though similar restrictions apply to the summaries of individual criminal histories now being added to NCIC. It is the administrative policy of the NCIC that an individual may "see and challenge the contents of his record . . . subject to reasonable administrative procedures." Because of the small number of criminal-history summaries in NCIC as of February 1973, the FBI reported that no one had yet sought to examine his NCIC record. In conclusion, Acting Director L. Patrick Gray wrote, "computerization is not a significant factor in generating response information" by the FBI to persons and groups seeking access under freedom-of-information laws. Where the records are legally open, he stressed, manual files and procedures are still the basic mechanisms for responses.[6]

A few other agencies report that, although they have automated files that are open under public access rules, computerization has not had any appreciable effect on furnishing information. The U.S. Coast Guard wrote, for example, "We can identify no significant effects of computerization on our ability to release data to the press, public or Congressional groups. As a relatively small organization, we have always been able to quite rapidly derive answers to questions, identify it as releasable data and make prompt releases." [7] A more detailed description of "no appreciable effect," based on the types of requests the agency receives, was supplied by the Federal Highway Administration:

> Computerization has had no effect on this Administration's handling of requests for information under the provisions of the Freedom of Information Act. Most of the requests we receive (approximately 85 per cent) are for copies of our directives, or copies of motor carrier accident investigation reports. Requests for these items are handled promptly (one to three days on the average). Extra copies of our directives are maintained for this purpose, and copies of accident reports are duplicated. We do not believe that computerization would be effective in facilitating our handling of these types of requests.
>
> Most of the other requests we receive are for narrative type information (correspondence, etc.) on specific subject areas. This information is not of the type that would lend itself to computerization. Requests for this kind of material are forwarded directly to the office of primary interest and are normally answered promptly, even when questions arise as to the releasability of the information requested.
>
> We do have extensive statistical data in our computer systems, most of which is available to the public. We provide for the sale of copies of either printouts or tapes in accordance with Departmental regulations. . . .[8]

A few other agencies reported what might be called "mixed effects" on the distribution of information as a result of computer efforts. A particularly frank reply came from the National Labor Relations Board. The NLRB maintains most of its data as case-oriented legal files, kept in manual form. It does not produce over-all statistics about industries, unions, or collective-bargaining trends, except in the "infrequent instances in which such information is offered as evidence in a specific case proceeding." The Board does not have a computer of its own; it purchases computer services. These have been used principally to produce statistics about the Board's own operations and for computer-based photocomposition of NLRB decisions, in bound volumes. As to these, the NLRB reports:

> We would have to conclude that the effect of computers upon our operating statistics (Management Information Systems) has been mixed. A favorable example is that a system recently installed, using terminals connected to a commercial vendor's time-sharing service, has given the Board Members much more information than was ever available before on the performance of their staffs in processing cases and seems to have helped us improve the timeliness of our service to the public. Most of the information from that system is not directly available to the public. In our overall, Agency-wide production of casehandling statistics for purposes of budget review and managerial control, computer processing of reports previously compiled manually and with punch-cards has increased the productivity of our data processing staff. But, as a small agency without a computer of our own, we have encountered nearly chronic shared-computer service problems whose net effect has been that monthly operating reports (some of which are publicly available) are not infrequently issued later than under the prior, non-computerized system. On the other hand, our use of shared time on computers of other agencies has shortened, by nearly half, the number of months which elapse between the end of a fiscal year and the release of the statistics contained in our Annual Report.

On the use of computerized photocomposition of Board decisions, the report concluded, "The technical problems we have encountered thus far have actually impeded the public availability of this large body of information."[9] Over-all, the NLRB felt that its statistical services, photocomposition program, and production of statistics requested by Congress (such as "detailed elapsed time statistics" for NLRB administrative proceedings) would be aided in the future by more effective computer usage. Such improvement "is, of course, our justification for the effort."

A similar response, from an agency with its own computers, came from the Federal Communications Commission. The FCC uses computers to record station reports on political broadcasting (as required by Congress); equal employment opportunities reports; financial and ownership information; technical service studies; radio-operator licenses; license and renewal notices; statistical reports on bureau work; and FCC payroll and personnel files. Though the report noted that "as a regulatory agency, the FCC has an open-door policy on information availability," some of the computerized data it keeps are not available for public access, such as "highly sensitive financial data" and "internal administrative systems." As a whole, the FCC reported, requests for information are met equally well from both the computerized and manual files. The FCC response concluded that "there is no direct correlation here between computerization and access to information" and computerization "may not in itself make for any greater availability of information."[10]

While one fifth of the federal agencies surveyed reported either no-effect or mixed-effects, four fifths of the agencies stated that their computerization of files subject to public access had aided compliance with freedom-of-information laws. In analyzing these replies, it should be noted that my survey had adopted a deliberately broad view of the "public," listing five types of claimants to executive-branch information:

— Individuals or organizations seeking access to their own files or those relating to claims they are pressing.

— Members of the press seeking access for investigative purposes.

— Congressional committees requesting information.

— Scholars doing studies of government policies.

— Officials of business, public-interest, consumer or other civic groups looking into government policies and programs.

This expansive listing of information-seekers helps explain why four fifths of the agency spokesmen believed they had improved compliance with freedom-of-information laws. Computers were being used to improve internal administrative operations or the agency's public duties. As a result, the agencies were generally able to provide information more easily from large-scale administrative files on clients and subject area. They have more easily retrievable data about their own personnel. They have better management reports about agency operations and decisions. They can produce better statistical summaries about industries, procedures, or services under their jurisdiction.* These improvements in data production and handling were seen by the reporting agencies as producing better distribution of data to each of the five groups about which I had asked:

As to individuals or organizations seeking access to their own files, agencies such as the Veterans Administration and Social Security Administration reported that requests from record-subjects about claims and benefits were being fulfilled much faster and more cheaply than in manual file procedures.[11] This was a direct goal of their computerization efforts. The Veterans Administration noted that veterans seeking access to information in their files generally apply to their local VA regional office. However, faster access is now possible through various fast-response computer systems "designed to handle veterans/regional office inquiries. This is the computerized Beneficiary Index Records Locator System (BIRLS) at the Austin [Texas] Data Processing Center, which is interconnected with regional office teletype equipment." Another VA system is a computer at the Philadelphia Data Processing Center that generates print-outs to veteran inquiries on their insurance premiums, loans, and dividends. Still a third computerized system generates extracts used to answer inquiries about compensation, pensions, and GI education.[12]

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* Many of the agency responses featured examples of improvement in the furnishing of information to various groups where the provision of such data was the function of a given unit or bureau within the federal establishment, such as the Patent Office supplying patent information to persons paying the required fees; the National Technical Information Service of the Department of Commerce supplying indexes and copies of government-sponsored research reports; the Office of Education's information system on research into schools and educational problems; the Social and Economic Statistics Administration's preparation of data for general distribution; the Defense Department Documentation Center's On-Line Retrieval System for research reports; or the Atomic Energy Commission's computerized data base of bibliographic citations and indexes to world-wide literature on nuclear science and technology. There is no doubt that the improvement of such services helps the flow of better information to user groups in the public. However, since freedom-of-information issues involve securing data about the policies and practices executive agencies are following, improvement in providing information services per se is not basically relevant to my inquiry here.

Most of the agencies replied that better statistical data and management reports had improved the quality and quantity of what they were able to provide to the press, either in the form of reports they published or in response to specific requests for information. For example, the Information Service of the Veterans Administration noted that "the wide range of statistics available [to the press] and the currency of such data is largely the result of computerization. The fact that an operating element within [VA] is able to respond to most requests for data, usually statistical, within a period of time that we and the press would characterize as 'reasonable' is evidence enough that computerization has affected the availability of this type of information in a most positive way." [13]

Among groups with legal and political power to obtain information from executive agencies, Congressional committees rank at the top of the list. This was reflected in agency replies. Except in the relatively rare cases where there are issues of executive privilege, Congressional committees make tens of thousands of requests for information yearly to executive agencies (through appropriation and oversight proceedings and in direct inquiries on specific topics). Executive agencies have always spent considerable time answering these requests. The agencies reported that computerization had enabled them to improve these services to Congress, either because of better data and reports available to the agency's management or because computer programming made it possible to extract the information the legislators sought more easily.

For example, Congressional committees and the press have obtained better information about the status of contracts and grants processed by federal agencies as a result of computerized reporting systems employed by many agencies, such as the Law Enforcement Assistance Administration, U.S. Office of Education, and Department of Transportation.[14] The Department of Transportation explained:

> For example, in 1971, an individual who wished to analyze contents and direction of the DOT R & D program would have to communicate and obtain cooperation of perhaps 20 key departmental officials who in turn would have to mount an effort of record identification and processing of some 2000 active R & D work units (contracts), costing anywhere between $20–80K. Most likely, the entire process would have taken three to five months, at which time the requester would have received resumes of R & D contracts or evaluated tabulations. Today, the same individual, whether in DOT or an outsider, is able to get almost 100 percent of the required data at a cost of approximately $1000 and within a week or less. Even this can be improved by those individuals who have access to remote computer typewriters or video consoles by subscribing to TRIS on-line service at an initial cost of $300 (for hook-up and training) and a character of 75¢ per computer minute, they are able to have their questions answered in less than one hour, and at a cost of $20 to $30 per question.[15]

Scholarly research requests are seen by many agencies as an area in which computerization has been particularly helpful. Once a data base has been automated, and assuming that the software programming is adequate for such purposes, a wide variety of special requests can be filled more quickly and at much less expense than before. As the Federal Aviation Administration noted, "studies of Government programs and policies, whether done by scholars, business or civic groups, or others, generally depend upon using information in 'bulk'—hundreds and thousands of cases. These studies are more likely to be economically feasible because of computerization than without." [16]

Many replies gave examples of providing better information to business, public-interest, consumer, and other civic groups looking into government policies and programs when the queries concerned substantive matters (patents, social-science reports, scientific information) as opposed to information on government policies and programs. Other replies addressed this issue and cited improvements in statistical reports, management reports, grant- or contract-information systems, and large-file searches. Frequently, one government agency provided data which regulated or public-interest groups could use to judge the adequacy of policies pursued by other agencies of the federal, state, or local governments. For example, the National Transportation Safety Board has automated files on aircraft accidents and incidents. This provided the data for a study of accident prevention and government safety standards. Citing many special studies and data it has furnished to groups involved in air safety, the Board concluded, "It would be virtually impossible to examine accident files of this magnitude and compile in-depth analyses of this nature without the use of computer technology." [17]

It is noteworthy that the major public-access results of computerization are essentially by-products of the primary goals of improving data services to clients and management. Improving the production of information to other parties, such as the press or public-interest groups investigating government operations, was not a goal of the computerization. Several of the agency replies stated this explicitly.[18] The replies also showed that effects of computerization vary considerably among units within a department. The Department of Transportation, for example, sent responses for eleven of its constituent bureaus, offices, and boards. These ranged from judgments that computerization was having no effect on public access (the U.S. Coast Guard, Federal Highway Administration, and General Counsel's Office) to estimates that it was greatly aiding responses to public requests (Office of the Secretary, Federal Aviation Administration, and Office for Environment, Safety, and Consumer Affairs).[19] Similar diversity was reported in responses from units of the Veterans Administration, Department of Justice, and Department of Health, Education, and Welfare.[20]

Within such units, the effects of computerization also vary according to the kind of information requested (and, therefore, the files to be drawn on for producing replies). The U.S. Office of Education, for example, reported that questions about its policies are "answered without significant recourse to computerized information." Questions about OE personnel, program operations, and agency contracts and grants are answered somewhat more easily as a result of automation of files in those areas. Statistical studies on school populations and programs have been computerized, and "are thus much more quickly available." The area most positively affected, OE reported, is information on educational research projects. OE developed the Educational Resources Information Center (ERIC), an automated system for making data on research results available nationwide.[21] This variation in impact reflects the principle noted earlier: the most cost-effective use of computers is to automate the largest, most frequently used files, often files containing factual and statistical matter. Files containing lengthy narrative texts and those that are not often used (e.g., individual case files in a regulatory or law-enforcement agency; are not prime candidates for computerization and have not generally been automated. Public requests for information from a case-type file (on one individual or about one episode or investigation) were not often affected by computerization. Those would still be filed manually. Requests for large-scale data or for searches of large, automated individual case files to spot patterns or trends are significantly aided by automation.

In terms of the federal Freedom of Information Act, the agency reports offered several important judgments about the effects of automation. Computerization was not significant in making the determination whether a particular record, report, or file was to be supplied to someone outside the executive branch. That remained a legal question, governed by the federal statute, court rulings, and agency regulations. The law does not give any special status to information simply because it is stored in machine-readable rather than eye-readable form. But the agencies did report that computers were enabling them to comply more effectively with the provisions of access laws than had been possible before automation.

Some agencies reported that computers were helping them separate material in a record or file that was available for public access from legally privileged material. The Commerce Department stated: "The use of computer methods unquestionably facilitates the separation and protection of information that is privileged under the stated exceptions under the Act. The suppression techniques available and used by this Department to prevent unwarranted disclosure of privileged information are far more effective than any methods that might be employed in a manual process." [22] Similarly, the Labor Department said that "computerization has improved our capacity in this respect. Data identification and control procedures are more vigorously documented and adhered to as a result of automation." [23]

Several other officials reported that automation was not having such an effect in their agencies. The Federal Aviation Administration commented:

> Computerization seems not to significantly affect our ability to screen out information not available for public inspection such as airmen medical records and detailed FAA personnel records. In both hard copy and computerized files procedural safeguards are necessary. The difference is largely the difference between establishing clerical procedural safeguards and computer program procedural safeguards. Our experience to date is not conclusive but it could be that carefully designed and tested computer screening may be more effective than human screening, subject as it is to human error.[24]

And, the General Counsel of the Transportation Department observed:

> While computerization would make it easier to locate requested records, it would probably not change the capacity or ease with which information items that are available for public inspection can be separated from those that are exempt under the Freedom of Information Act. After a requested record is located, it must still be reviewed and evaluated by persons competent to determine whether the document is exempt, whether it should be disclosed as a matter of policy even though exempt, or whether it should be released with appropriate deletions. Making such a determination as to each document before it is put into a computer system is obviously not feasible.[25]

A second way in which some agencies believe computers have made compliance with the Freedom of Information Act more effective is in the capacity of computer systems to produce special lists, statistical reports, and surveys in direct answer to requests by public groups. These, according to the agencies, could not have been produced with manual files because of the high clerical costs or because the information was scattered in regional offices or because the time needed was longer than the inquiring party could allow.

Finally, improvement in grant, contract, and licensing information is seen as a major step toward greater responsiveness. To whom government agencies award grants, contracts, and licenses is an active public-policy issue. The LEAA's Grant Management Information System, indexing some 30,000 grants and subgrants that have been awarded by LEAA since 1968 has been a boon to Congressional and public-interest groups studying the work of that agency. Furthermore, specialized publications prepared and distributed from the LEAA's automated files—such as a volume with extensive details about each of the automated criminal justice information systems being funded, state by state, through the LEAA—has facilitated analysis by legal, civil liberties, and public-interest groups of the privacy and security aspects of the LEAA grants and the systems they support.[26]

2 *Reports from the information-seekers* The most striking thing about the replies from the five groups of information-seekers is how often they agreed with the estimate of computer impact of federal executive officials, though they start from different interest positions and often make different judgments about how healthy the state of public access currently is.

Congressional committee Counsel replies uniformly corroborated the picture presented by agency reports. Richard Sullivan, from the House Committee on Public Works, wrote: "This Committee and its Subcommittees have not experienced any difficulty in continuing to obtain needed information for the purpose of legislative oversight. The ability of the agencies to furnish detailed statistical information on short notice has been greatly facilitated as a result of the installation of computer systems." [27]

A similar report came from Donald Knapp, Counsel to the House Committee on Veterans' Affairs:

> I am pleased to report that we have experienced no major difficulty with the computerization of Veterans Administration files and records. As a matter of fact, for the most part we have found computerization has expedited the collection of information needed by the Committee to make timely decisions concerning policy matters.
>
> As an example, I am enclosing a copy of House Committee Print #9, 93rd Congress, which was programmed and computerized. In past years, the compilation of this information [relating to the operations of Veterans Administration hospital and medical programs] has required several months. During the past two Congresses, through computerization, we have been able to produce the report in about two weeks.[28]

Lawrence Baskir, Counsel to the Senate Subcommittee on Constitutional Rights, stressed that the central problem in securing access to government data was persuading the department head that he should release the information. If he wanted it released, Baskir said his Subcommittee obtained the data whether it was in manual or computerized storage. The heart of the issue was one of policy, a political question, and "this is not being determined today by the presence or absence of computerization." [29]

The most extensive response from a Congressional Counsel came from L. James Kronfeld. Because the Government Operations Subcommittee of the House Committee on Government Operations, for which he works, regularly investigates complaints from persons who have had difficulties in getting data or have been refused information by executive agencies, its experiences is among the broadest to be found in Congress. Kronfeld wrote:

> What we have found is that the computerization of information does not necessarily have any bearing on its availability. Agencies make their decisions on availability based on

> the subject matter of the information rather than its form of storage. Of course, our recent hearings [the Moorhead Committee hearings on revision of the freedom of information law, held during 1972–1973] have shown serious deficiencies in these agency decisions.
>
> The main problem with computerization is the cost to the requester for receipt of the information. For instance, if the information were kept in paper files and a request is made for a specific piece of information which is readily available, it is relatively cheap for the agency to pull the file and make copies of the specific information. However, when a series of files, such as the record of payments under a specific subsidy program, is computerized, the costs assessed by the agencies are quite high, as they are generally related to computer time costs.
>
> As an example, the most common cost for a copy of a tape is $62.00. Agency personnel have told me that it is much easier to supply a complete duplicate tape if a requester wants only a small part of the information on the tape rather than to pull and print that specific information. A duplicate tape, however, is only useful if the requester has print-out facilities. In cases where a print-out of the data is requested, the usual agency practice is to charge a certain amount for the time taken to locate the information on the tape, plus $5.00 per page for the print-out itself. The time charges are generally computed on the basis of the agency costs per hour for use of the computer. . . . Therefore, what would have been a minor charge for pulling and copying a paper file can be an expensive proposition if the material is on tape and a time-use and print-out charge is levied.[30]

However, Mr. Kronfeld went on to note that the computer provided considerable savings when someone wants large bodies of data. "In the case where the requester wants the whole category of computerized information and has the facilities to process the tape, the cost savings can be substantial." Mr. Kronfeld cited the production of computer-generated mailing lists for commercial advertisers and organizations as a prime example.[31]

Most of the other groups of information-seekers reported either no experience with computerized files or no special problems with them. Such replies came from: the Consumer Federation of America and the National Consumers League, from public-interest law firms, such as the Institute for Public Interest Representation and the Citizens Communications Center for Responsive Media; from the National Capital Areas Chapter of the American Civil Liberties Union; from the freedom of information committees of the AP Broadcasters Association and Aviation/Space Writers Association; and from the Washington Office of the League of Women Voters.

However, some of these information-seekers did have experiences with computerization. Among the public-interest law firms the most interesting comments came from two of Ralph Nader's groups, the Center for the Study of Responsive Law and the Public Interest Research Group. Harrison Wellford and Ronald Plesser are the persons with whom I talked.[32] Messrs. Wellford and Plesser said they had had some experiences in which computerization had made it possible to obtain information that would have been difficult if not impossible to get from the previous manual file. Their example was from the Securities and Exchange Commission. An SEC code provision says that anyone who is more than a 10-per-cent owner of shares in a listed corporation must file an ownership form with the SEC. This is a public document. However, it has always been filed under the company name, not the individual's name. When the Nader Congress project was under way in 1972, the researchers wanted to find out what stocks were owned by each Congressman and candidate for Congress in 1972. But, Mr. Plesser noted, "We would have had to go through 10,000 files to get the names."

However, the Nader group learned that the SEC had a name-access program for this ownership file, and asked to have a list compiled of each Congressman and candidate for Congress in 1972. At first, the SEC hesitated, on the ground that it might be an invasion of privacy. It could lead to use of their files for commercial mailings, political solicitations, etc. However, the Nader group persuaded the SEC to supply the list, and it aided the Nader Congress research greatly.

On the other hand, the Nader associates cited several examples where files had been computerized, but the absence of a software program to produce the desired information prevented them from obtaining the data they needed. In one case, litigants in a damage suit against the manufacturer of a helicopter, suing after an air crash, wanted the maintenance background records for a particular ball bearing believed to have been defective, or defectively maintained. The Air Force keeps a computer log of these maintenance records, but its retrieval program is only for major parts, not minor ones like the ball bearing. The Air Force could print out all of the "nonmajor items," but this would provide a print-out 300 sheets long. The issue was whether the Air Force would reprogram their computer system. When asked, they replied that the computer was busy twenty-fours hours a day, seven days a week. Any free time that developed was needed for system repair. Even if there was time available, the cost of reprogramming was estimated at several thousand dollars. *

Another example involved meat-inspection reports and pesticide data. The Center for Responsive Law won the right to inspect these at the Agriculture Department. Some of these data were computerized, but when the Center wanted information on a statewide basis, it was told that it would require costly reprogramming which, Mr. Wellford observed, was "beyond our ability to pay."

The Nader group experience underscores the fact that more information of the kind sought by public-interest groups is potentially available in the computerized files than had been provided in manual records. But where the agency has not provided software programming to extract what these groups want, it is not yet clear under interpretations of the Freedom of Information Act whether a demand can be made that such expensive reprogramming, often interfering with vital computer services, can be required of the government. If so, who must pay for it?

Among the consumer representatives, a typical statement of consumer outlook came from Benjamin Kass, a lawyer for consumer interests and formerly a staff member of two Con-

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* A computer expert has said that a tape file copy could have been produced and the desired information retrieved on another system for perhaps $1000.

gressional committees that specialized in supervising government information policies. Mr. Kass observed:

> Whenever my consumer groups or people have ever needed information, we put in a request and get back volumes of microfiche or print-out copies. I don't think computerized information presents a unique problem. If some bureaucrat doesn't want to give information that should be public, it doesn't matter what the nature of the information is—whether it is computerized or not. Generally, it is easier to get information if it is computerized because it is harder to give C information and deny it to A or B. It all boils down to the attitude of the agency bureaucrats. If they don't want to give it out, that's what counts.[33]

Further confirmation that computerized information is often useful but that groups have to fight to get it came from two leaders of women's rights activities. Myra Barrer, of Women Today, related that she had been trying for some time to get access to computer print-out sheets showing the number of women employed in each federal agency at each grade level, at what salary, etc. She pressed for access at the individual agencies, and often got it, "after haggling," but what she really wanted was the collection of agency computer print-out sheets kept by the Civil Service Commission and bound in one volume titled, *Women in Government*. According to Ms. Barrer, this book is "long past due." In terms of its usefulness once it is "pried out of the agency," she commented, "the computer print-outs have the advantage of being a lot easier to use for comparing year-to-year figures. Each agency in the print-out lists the supergrades and the women's names for various years. All the information is in one place." [34]

A similar appraisal of the value of computerized data came from Ko Kimbel of the Women's Training and Resource Corporation, in Portland, Maine. The Corporation applied for a loan from the Small Business Administration but encountered "all kinds of snags and difficulties that we suspected were because we were women. So we decided to find out what percentage of total moneys and services were given to women by the SBA." When they contacted the Director of SBA, he said that the information was not available. By going to Congressman William Hathaway, who asked for these data from SBA, got them, and turned them over to Ms. Kimbel, she was able to secure a computer print-out containing a monthly breakdown of the moneys given as loans to various businesses, and to determine which of these were run by women. It turned out to be less than half of one per cent. SBA officials said that the print-out was not "reliable," but Ms. Kimbel noted that it came from the Reports Management Division of SBA, which "is regarded as a very reliable source." [35] The SBA data was released to the press and various women's groups, and served as highly useful ammunition with which to attack antiwomen policies at SBA.

One response from each of two other categories of information-seeker indicate that these groups have the same reaction as those already discussed.

Sam Archibald, formerly Staff Director of the House Committee on Government Operations and now Washington Director of the Freedom of Information Center wrote these comments:

> It is my impression that computerized records are harder to obtain, although easier to amass. The government collects information in an easily retrievable form but is reluctant to regurgitate that information because it might, just might, contain more facts than the requester asked for or the government administrator wants to divulge.
>
> There have been instances of absurd restrictions placed on the search and retrieval of computerized government records and of absurd search and copying charges levied by government agencies. But I do not have at hand the details of those records. My material, unfortunately, is not computerized.[36]

Mr. Archibald's commentary, it seems to me, coincides with that of the Nader groups in emphasizing the cost factors in obtaining search and print-out access to large computerized data bases.

Finally, let me quote from a letter received from James Ridgeway, a leading investigative writer and book author, now an editor of *Ramparts* magazine: "I have had considerable difficulty obtaining information of a nonsecurity nature from the federal government, but not because of any mechanical reason, such as computers. These reasons all pertain to policy. In certain agencies the government hinders dissemination of information by charging for documents, some of which are computer print-outs." [37]

Following are the two major conclusions suggested by the information-seekers who responded to my inquiry:

1. The strongest agreement that computerization has improved the usefulness and availability of information to be obtained from executive agencies comes from Congressional committee Counsel. The willingness of executive agencies to furnish this without cost to legislative committees, and to suppress arguments about searches taking too much of agency personnel time, help to explain why the legislative Counsel have such a generally untroubled perspective on cost and inconvenience.
2. Among nongovernment information-seekers, computerized records have often been found to be extremely useful, providing material and services that were not previously available. The private seekers agreed with executive-agency officials that the most important issues are ones of policy (is the information open to public inspection or not?) not of the particular form of information storage and retrieval. Antisecrecy forces see agency officials *extending* secrecy-oriented approaches to the computerized files. The private information-seekers pointed to problems of cost in certain requests for information, especially whether agencies are developing access programs that serve public disclosure needs as well as managerial ones

IV An Analysis of the Current Situation

So far, I have reported on and summarized the replies to my survey of information-holders and information-seekers Now, drawing on these materials but adding my own experiences in studying the effects of computerization in organizations, let me present my analysis of what has been happening, and what it means to public access.

First, computerization has unfolded as a process in which organizational managers decide what they want to do with this new technology to carry out their missions more efficiently. It is in pursuit of this organizational efficiency goal that decisions have been made whether computers should be installed, which files to automate, what "better services" to pursue through software programming, what program evaluation data or policy-planning data to seek from the computerized data bases, and what reports should be generated to management. Legislative, public, and judicial pressures in the past few years have elevated the issues of privacy to the level where they now command some executive attention in computerization plans and procedures, and there has been some legislative examination of the cost-justifications and cost-effectiveness for agency automation. But virtually no attention has been paid by the managers of organizations to the *public-access issues* in their computer decisions, nor have these issues been put before the managers by the usual public-interest and legislative-watchdog forces. No Congressional hearings have yet focused on these matters, no Nader group has taken up this question as its prime concern, no group of computer professionals has accepted this as an obligation of their civic and professional duties, and no judicial rulings have dealt with the issues of access presented by computerization. In short, the major decisions about the use of computer technology, in terms of whose interests are to be served by the development of this powerful new tool, have been entirely in the hands of executive-agency officials.

Second, even though the reports of agency officials and the experiences of many information-seekers indicate that there have been some increases in availability and usefulness of information as a result of computerization, these have been basically serendipitous effects. That is, they have been fall-outs from better control and utilization of information. To the extent that these techniques, designed to help agencies use information for their own purposes, have helped information-seekers, it has not been because the agencies have set out to provide better services to the press, scholars, public-interest groups, or government critics. This point needs to be understood, not because it brands the officials of agencies as deliberate culprits but because it indicates that the forces seeking to improve the public's access to information have not begun to appreciate what computer technology might do—with the proper inputs to agency computerization plans and procedures—if public-interest spokesmen had some say in how the public's money is spent on this costly technology.

Third, this failure to realize what is at stake, to force the development of new laws, procedures, and institutions to bring public-interest groups into the computerization process, to insure better public access to government data, has taken place at a distressingly critical time in the expansion of computer technology in government. In the late 1960s and early 1970s, third-generation computer systems have been installed in the major government agencies and departments. Basic decisions about the architecture of the systems have been made, money has been allotted for the vital software programming that will control how the files are used, new networks for information exchange and dissemination have been created, and the technical priesthood to manage these systems has been assembled and invested with important authority to control the machines. While computerization is basically an ongoing process, and many things can be done to modify or alter the systems, it is very difficult, very costly, and very disruptive of organizational functions to attempt major changes once they have been designed and programmed in a particular way.

Furthermore, developments in computer technology unfolding in the 1970s threatens to make the problem more acute. For example, the proliferation of mini-computers means that government agencies will be able to place many "small" files of information on relatively inexpensive machines. This will make it harder to keep track of where information is stored and how it is used.

In the first fifteen years of computerization in government, I do not believe the record reveals a significant *lessening* of public access to government information as a result of automation. What it does reveal is a case of *lost opportunities* and of *potentially great danger* in the future. We have not appreciated how to bring public participation into the computerization decisions, and we have failed to develop the standards and procedures that will prevent computerization from upsetting the desired balances between public access and government secrecy.

V Recommendations for Action

I see four main objectives for public-access spokesmen in the effort to bring computer technology under greater public control:

1. Create a public right to effective participation in the decisions of government agencies regarding computerization. It is also necessary to develop the groups, institutions, and procedures that are able to take advantage of this right and to provide the financial support needed.

2. Legislate a right of access by the individual to records kept about him in government agencies. This right would cover all but a small group of government files. It would include provisions for giving citizens an easily obtainable guide to the individually identified records kept by government agencies. There would also be a right to challenge the continued retention of inaccurate, incomplete, or misleading information. These rights are essential if the right of the public to know what government is doing extends beyond access only by representative groups. It must also be secured for millions of individuals who have lost confidence that government agencies—in social services, taxation, health, law enforcement, etc.—always collect proper and accurate information. For these citizens, only a direct and personal right of inspection in their own record will satisfy the access principle in an age of large-scale data banks.[38]

3. Identify and develop techniques to make computer systems help the cause of public information as well as agency operations, such as requiring publicly available indexes to file content and software programs, instituting requirements to develop the software necessary to produce information that is in a data base but is not retrievable, and requiring audit-trails that record the uses made of information in files. Again, providing the funds to finance such operations is critical.

4. Pay attention to the effect of antisecrecy actions on the

rights of personal privacy of persons and groups about whom there is sensitive information in files. Develop the exceptions and special procedures that will not make these civil-liberty interests the victim of the need for public disclosure. Protection of the government's need for temporary privacy for its decision-making processes should be incorporated in the new policies and procedures.

I am sure it will take a great many legislative hearings, organizational conferences, scholarly studies, and public debates before all the elements of such a program will be properly defined and put into law and practice. But long journeys do have to begin somewhere, and in this spirit of a beginning, let me cite some of the steps we might take.

First, we dare not let the current process of revising the Freedom of Information Act be concluded without getting the issue of computerization and access on the Congressional agenda. Hearings should be held, perhaps by adding this topic to the series on "Federal Use and Development of Advanced Information Technology" which have been initiated by the House Foreign Operations and Government Information Subcommittee.[39] The basic measure that should emerge from such hearings is statutory language doing two things. The first is to create a duty in executive agencies to give specific consideration to the improvement of public access in their plans for and operations of automatic data processing (ADP), with a review of the adequacy of their compliance vested in a legislative committee or legislatively responsible agency or commission.

An excellent model for this provision can be found in a bill sponsored by Senator Lee Metcalf, S. 770, to establish an Intergovernmental Office of Consumers' Counsel. One purpose of the Metcalf bill is "to improve methods for obtaining and disseminating information with respect to the operations of regulated companies of interest to the Federal Government and other consumers. . . ." To make sure that this purpose is served, the Metcalf bill provides:

> Sec. 301 *Automatic Data Processing*
>
> (a) Federal agencies are hereby authorized and directed to make full use of automatic data processing in preparing the

vacy, and public access means creating working groups of persons with legal, technological, and social-science skills, to provide the blend of expertise needed to examine the computerization proposals of executive agencies and to inspect their actual operations. While there have been some still-born early efforts—like the attempt by Ralph Nader to enlist volunteers from the Washington area Association for Computing Machinery in projects to use computer resources to get consumer information directly to shoppers, and to distribute consumer-agency violation data on business establishments directly to buyers—these have been few and have not had much of an influence. There are many groups that could be enlisted, if the proper organizational format and funding could be supplied. For example, a public interest group of lawyers, computer specialists, social scientists, and journalists could be set up to work on "Computers and Democratic Government." Or the American Civil Liberties Union's new Surveillance Project in Washington, D.C., might undertake this operation, drawing on the necessary specialists. A group like Common Cause or the Freedom of Information Center might be the catalyst and organizer.

Again, there exists precedent to draw on for this idea. The Federal Power Commission, in April 1972, issued a notice that it proposed to create a "Fully Automated Computer Regulatory Information System," as an aid in the FPC's basic responsibilities under the Federal Power Act. The general plan for the system was described, in considerable detail, and interested parties were apprised of their opportunity to appear and comment on the proposed system. The proposal has not yet been implemented, and various parties have filed letters, briefs, and comments with the FPC. When I examined the docket entries indicating who had filed such comments, I found a long parade of power companies, oil companies, and state public-service commissions, but no public-interest laws firms, spokesmen for the press, or other guardian groups for public access. This suggests that the excellent procedure that the FPC is following will not do much for public access (or for privacy) if there are no organizations, financially and technically capable, ready to speak for these values.[41]

VI A Concluding Note

Thomas Jefferson, the leading apostle of a free press and open government, was also a devoted enthusiast of science and technology. While he was drafting the First Amendment, composing Virginia's statute on religious liberty, and fighting Chief Justice John Marshall's use of judicial power to enhance the rights of property holders, Jefferson was also involved in what eighteenth-century writers called "useful invention," the application of science to liberate mankind from enslavement to nature and endless physical labor. He mastered architecture and designed and built Monticello. He invented what he called the "polygraph," an instrument that attached one pen to another, so that a written copy could be made automatically by a person when writing a letter or document. For Jefferson, science was not an enemy of liberty; it was an ally, and even though he had read deeply about the uses of science to develop new instruments of warfare, he rested his faith in the belief that the rational spirit, in science as well as in republican government, offered man his best chance for progress.

We need the Jeffersonian spirit today, more than ever. Technology has grown increasingly powerful, and the struggle over who will control and use it more intense. Were a Jefferson to return to the United States today, I believe he would be fascinated by computers, by the way that automation of clerical functions had replaced armies of petty clerks and minor officialdom. But after his wonder had subsided, he would ask: For whose benefit are these new tools being used? Who controls them? Are they on the side of civil liberty or of arbitrary authority? We owe it to the Jeffersonian heritage to develop the necessary technical information and skills to be able to monitor this new technology, within the tradition of open government and protection of personal privacy that Jefferson would have insisted upon for the preservation of a free society. The skilled and persuasive advocates for the values of computers for organizational goals have, so far, enjoyed a monopoly of serious discussion. It is time that those concerned with access to data, by the individual and by representatives of an informed public, also be heard—in the kind of adversary process from which wise public policies have traditionally emerged.

VII Discussion

DR. WIESNER: Does modern technology make legitimate and illegitimate access to information more difficult to control? On the one hand, we are obviously concerned about privacy, the rights of the individual; and on the other, computers and modern communication techniques can increase the difficulty of monitoring the performance of government and discovering the data government has. The use of modern technology does not automatically guarantee access to information.

The legitimate and illegitimate use of modern technology does endanger the rights of the citizens in many ways. Probably the greatest danger comes from the opportunity for accumulation, centralization, and processing of information. We have the acquisition of data by the Army on people who attend war-protest meetings. This was followed by an attempt to check this data against files on credit ratings. Then there are computer personality profiles, designed for experimental purposes, but used to make predictions about social or criminal behavior patterns of citizens.

It is a Kafkaesque use of technology, not only information technology but a variety of other scientific pursuits, all of which seem to me to be used to frighten and intimidate the people. One can't be sure the results will always be so unimpressive or that the people using new technologies will remain incompetent. We do need, I think, a stronger guarantee against misuse of these burgeoning technologies. It is very clear that the power of the computer to accumulate data and to model hypothetical situations is going to grow as is our ability to coordinate information from all over the world. One of the things that people keep hoping is that there are technical solutions to these problems, and in fact there probably are some technical aids. For example, I think you could program computer memories to fade, if you wanted to, in six months or one year or ten years, the way human memories fade. You could program computers not to accept certain kinds of data. One can dream of a whole variety of technical safeguards that one can build into the system, but it seems to me that anything that a designer could put into such a system could be overcome by somebody in a position of authority, who could give instructions to circumvent the devices. It seems unlikely that society is going to get protection from the technicians. It may get some help, but by and large I view this as a social and legal problem and it has got to be faced.

MR. KRONFELD: Under the Administrative Procedure Act, regulations which an agency intends to make which affect the public have to be published in the Federal Register, with a thirty-day period for public comment, and the comment must be taken into consideration prior to drafting the final regulation.

I wonder if that vehicle might be used to get public feedback on decisions to go to data processing.

MR. PLESSER: The Freedom of Information Act guarantees access to certain Securities and Exchange Commission forms filed pursuant to rule 16B of the SEC. The computer makes it easier to use these forms. The SEC made a decision that they would allow us to use the easier access. That was great. But I am not sure that that is a principle created in the law. You might have access to information, but do you have a right to use a computer for easier access? That question has to be dealt with.

But the computer can also make it harder. You can walk into the Department of Agriculture, walk up to the file room, and look at whatever you want. What happens when they start to computerize those records, reduce them to magnetic tapes, and put them in the data bank? There is no question that the information is public information, but who has the burden of paying the computer time? Who has the burden of paying for running that computer to get that information out?

MR. SCHWARTZ: I want to emphasize my own personal appreciation for the broader approach of Dr. Wiesner and Professor Westin. It is vital to realize, as Dr. Wiesner so well pointed out, that the problem we are concerned with, executive governmental secrecy, is really part of a much broader problem—the problem of how the law and government institutions will cope with the kind of society we are going into. For the first time in our history, we are finding a problem, a crisis, confronting the society, a domestic crisis which the legal mind and legal techniques and attitudes may not be sufficient to resolve. If you go back over our history, what were the great crises before? Setting up the nation, tearing apart the nation in the Civil War, expansion of the society and the economy. We were able to frame all these in legal terms, but now we are confronted with a new technology in a postindustrial society. For the first time, perhaps, we are confronted with the possibility of an awesome reality.

If we try to deal with this problem in purely legal terms as we are wont to do, I wonder if it would be adequate. The legal mind, with all its advantages, is a very narrow mind. It emphasizes techniques and technicalities. It is restricted in its reasoning and response. How is the individual to remain an individual in this new kind of society? We ought to start asking the questions. We ought to start combining law, technology, the legal mind, the political scientist, and others, or the brave new world that we are going into will surely turn into 1984.

MR. WESTIN: Before we allow agencies automatically to computerize the information they held previously, and become national holders or regional holders of such information, we need to ask whether we don't want instead some independent holders. A good example is the FBI's National Crime Information Center.

In 1971 Attorney General John Mitchell made the decision to give management of the National Crime Information Center to the FBI. He rejected two alternate proposals to let it be run either by an independent agency under LEAA or the Justice Department directly or by state law-enforcement officials. We have allowed a line investigative agency, the FBI, to manage this system. It should not be in a line agency, but an-independent agency, without prosecutors or investigators or a probation function, so we are assured that the computer is not abused.

DR. WIESNER: One of the things that has become evident in the last decade is that we pass laws to control things we don't understand, and then we get into trouble of all kinds.

This has been true in the environmental field and in a number of other fields. We have sometimes confused the goals and the process—the goals are clear but the process may not exist. We pass the laws nonetheless, and then hope that either technologists or lawyers or political scientists or educators will invent the process. Much of our current turmoil is a consequence of the gap between the goals we continue to articulate and our inability to develop the process to achieve them. In many instances, the time to develop the processes is longer than the time we are willing to allow. We don't understand these things and we become very impatient.

So I see the need for public-interest groups to study and understand the many problems that arise from the interaction of society and technology.

MR. STONE: I wanted to raise the "measure countermeasure game" in the secrecy area.

The FBI invented the trash cover a few years ago. They go around and pick up the trash of people they have under surveillance. This probably led to the paper shredder.

Similarly, the government can subpoena telephone records to find out whom you talk to. This has led to the "sterile" phone number. It leaves no record of calls made to it. Howard Hunt wanted one.

Since telephone records can be subpoenaed, people can be kept under surveillance even without tapping their telephones. By subpoenaing records to find out how often one person called another, you can make a map of who knows whom. I don't know how long these records are kept, but it seems to me they pose a real threat. If someone starts following me around, checking on whom I have talked to each day, even if they don't hear the conversations, they could learn a lot about me. Would I have a remedy against that?

MR. GOODELL: This is often used in criminal investigations.

MR. STONE: I met an old lady who had been called on by the FBI agents. They didn't even know who she was, but they knew she had talked to somebody else in whom they were interested. Some restraint should be put on this process of mapping out personal relationships.

MR. SCHWARTZ: This is one of the most important investigative techniques. It is used not only by the FBI, but by investigators on the Hill. You can use telephone calls to break very important cases.

MR. SHATTUCK: There is a new federal statute, the Bank Secrecy Act, which requires banks to photocopy all bank checks on microfilm and keep them for five years. The bank records of an individual are even more revealing than telephone records. It has not been sufficiently emphasized that the investigative tools of the government are greatly enhanced by the technology of record-keeping.

MR. CALLEN: The fight against crime is going to provide the major push that will bring technology to bear on individual privacy. There is a tremendous desire to stop crime; technology is being studied extensively as a tool in that fight. It is difficult for one foot patrolman to walk the streets and cover everything. There are studies around the country to have scanning television cameras up and down the street. One man can sit in an office and look at a whole bank of television cameras and follow everything that goes on for a number of blocks. The time may well come where it will be impossible to walk the streets without having somebody sitting in a police station watching you as you walk along, perhaps recording you on video tape. A parabolic microphone could be aimed to pick up what you say to somebody as you walk down the street. As another example, remote, Doppler-shift sonic lie detectors are now being developed. They sense the breathing rate of subjects without their knowing that they're taking lie-detector tests. All those things will be used as weapons against crime, but they are also threats to the privacy of the individual.

Appendix 6.—Additional Responses to Subcommittee Questions

UNITED STATES DEPARTMENT OF COMMERCE
National Technical Information Service
5285 Port Royal Road
Springfield, Virginia 22161
OFFICE OF THE DIRECTOR

JUN 14 1989

Honorable Robert E. Wise
Chairman, Government Information, Justice,
and Agriculture Subcommittee
Committee on Government Operations
B-349-C Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

As you requested, enclosed are my answers to your questions regarding my testimony as well as the corrected transcript of the testimony at the May 23rd hearing on federal information dissemination policies and practices. Thank you for the opportunity to express the views of NTIS on these important matters.

Sincerely,

Joseph E. Clark

Joseph E. Clark, Ph.D.
Deputy Director

Enclosures

QUESTIONS SUBMITTED BY MR. WISE

HEARING ON FEDERAL INFORMATION DISSEMINATION POLICIES AND PRACTICES

NATIONAL TECHNICAL INFORMATION SERVICE

QUESTION:

At the hearing, there was a discussion of an OMB inventory of information products that NTIS disseminates on floppy disk at a price of $75.

a. You testified that the preparation by NTIS of this information for sale was expensive. Please indicate in detail what NTIS did to prepare this information for publication? If possible, please indicate the approximate costs for the NTIS preparations.

b. Why did NTIS decide to publish this inventory?

c. Why didn't NTIS require the originating agency to prepare the inventory for publication or to pay the costs?

ANSWER:

a. Essentially, each originating agency prepared its portion of the inventory and submitted the inventory in paper format to OMB, who provided it to us. The NTIS preparations ensured consistency in the submissions and required keying the requisite information to create the database for the inventory on a mainframe computer. The inventory was then downloaded from the mainframe onto a floppy disk. The approximate cost for these preparations was $75,000.

b. NTIS decided to assist OMB in making this inventory available to the user community because of the usefulness of the information contained in the inventory and in hopes that sales of the diskette product would defray the costs. Further, NTIS viewed coordinating with source agencies as a means of making valuable contacts and expanding NTIS' acquisition of other important Federal information.

c. As stated in the answer to 1.a., each originating agency prepared its portion of the inventory. NTIS assumed the role of integrating the information for the reasons expressed in the paragraph 1.b.

QUESTION:

NTIS is distributing software for the National Library of Medicine's MEDLARS system.

a. What is the price for the software?

b. How much did it cost NTIS to prepare the software for publication and to distribute it? Please be as specific as possible in identifying the nature and amount of the costs.

c. Is NLM covering any of the costs of publication or distribution?

ANSWER:

a. GRATEFUL MED should be regarded as an online searching tool, the cost for which is included in NLM's online access charges. The GRATEFUL MED purchase price ($29.95) covers the initial production costs. The subsequent costs of version updates are included in NLM regular online access charges. GRATEFUL MED currently accounts for approximately 30% of computer and communication consumption thereby easily generating appropriate revenues to cover the $600,000 annual GRATEFUL MED production costs.

b. The software was developed and paid for by the National Library of Medicine (NLM). NTIS pays for the printing of the user guide, diskette duplication, and distribution costs.

Costs for Grateful Med in FY 1989 are as follows:

Printing costs for user guide - binders slipcases and text for 5,000 new packages and 13,000 update packages............	$256,000
Duplication costs for approximately 77,400 disks..........................	73,000
Shipping Costs..........................	39,000
Order Processing Costs....................	54,000
Overhead Costs..........................	42,000
Total Costs....................	$464,000

c. Yes, NLM reimburses NTIS for all costs associated with the publication and distribution of the free updates to prior purchasers of Grateful Med. NTIS is also reimbursed for any shortfall of funds which result from the sales of new versions.

QUESTION:

What plans does NTIS have for plant modernization? Did recent legislation provide adequate authority and funds to support modernization or is additional authority still required?

ANSWER:

NTIS has prepared an amendment to the FY 1990 Budget to utilize net revenues for specific modernization efforts. This amendment is currently under review within the Administration.

The Department's Office of General Counsel has informed NTIS that the language of the NTIS Act of 1988 does provide sufficient legal authority to retain net revenues for modernization.

QUESTION:

How do NTIS prices compare with prices charged by the Government Printing Office?

ANSWER:

NTIS prices generally are higher than the prices charged by the Government Printing Office (GPO).

The reason that NTIS prices are higher is primarily because NTIS is not able to generate the economies of scale in the printing and sale of the information contained in the NTIS collection. In comparison, GPO is able to generate economies of scale by selecting primarily publications with high sales potential and then overriding the print run at a relatively low unit cost per copy.

More specifically, over 50% of NTIS orders for documents in paper copy are for documents whose shelf stock is exhausted. Fulfilling these orders requires that the documents be reprinted from microfiche archive copies through "blow-back" to paper copy. NTIS documents usually sell 5-10 copies per title.

Further, NTIS permanently archives material received from source agencies and does not turn away material from source clients on criteria having to do with sales potential.

QUESTION:

Consider the following hypothetical situation: Suppose that the direct costs of reproducing and mailing information on a floppy disk are five dollars. If an agency makes the disk available under the Freedom of Information Act, the charge to the public would be five dollars. If the agency distributes the disk through NTIS, the charge might be as much as $75.

> a. Given these figures, should the Congress encourage or discourage agencies from using NTIS distribution facilities?
>
> b. Could NTIS establish a separate distribution unit for popular information products with the express purpose of providing products at the lowest possible cost to consumers? In order to accomplish this, the unit would not contribute to the losses incurred for other NTIS products. Are there practical or legal barriers to implementing this idea?

ANSWER:

a. Congress should encourage agencies to use NTIS because of its permanent archive, efforts to keep prices low, announcement to a worldwide audience, assistance in improving product accessibility, and reliability in being the central source for scientific and technical information. More specifically:

- NTIS will permanently archive the item which the agency provides and make it available to the agency and any other users for years to come. It will never go "out-of-print" or become unavailable.
- The price of the item will always be kept as low as possible so that the maximum number of people will be able to afford the item.
- The item will be announced worldwide to a larger audience than the agency alone would probably ever reach. If the item seems to be of special importance, NTIS will undertake special promotion efforts.
- NTIS will assist agency personnel to improve the product and its packaging so that it will be more attractive to more users.
- NTIS services will improve access to the item, not only through worldwide announcement, but also through convenient ordering and payment arrangements such as credit cards and by automatically notifying the purchaser of updates to the item should they be made by the source agency.

- o The user community can rely on NTIS as the single source for Government information if all Federal agencies register their information products with NTIS.
- o The source agency gains the benefit of being relieved of a substantial administrative burden.

b. There are no legal barriers to implementing such an idea. In fact, NTIS already achieves the benefits of such a distribution unit by evaluating the sales potential of various computer products, with input and/or support from the source agency, and, when appropriate, establishing lower prices for selected products. Some of NTIS' specially priced computer products are the following:

Grateful Med........................	$29.95
Regional Information System for African Aquaculture...........	$15.00
Toxicology Information Program (TIP)	$15.00
State Energy Data System............	$35.00
CHEMLEARN...........................	$25.00
TOXLEARN............................	$25.00

NTIS believes that considering each acquisition for lower pricing on its merits has advantages over utilizing a special distribution unit. Practically speaking, the user community would likely perceive that the remaining products sold outside the unit were priced too high, leading to declining sales for these products.

QUESTION:

A recent promotional announcement for the NTIS Foreign Technology Abstract Newsletter (dated January 1989) listed NTIS's "exclusive" sources of foreign technology news. Listed among the exclusive sources were the U.S. Embassy Science and Technology Counselor, the Office of Naval Research Specialists, the Foreign Broadcast Information Service, reports from U.S. scientists and scholars participating in overseas exchange programs and study tours, and "the NTIS worldwide network of official and quasi-official government scientific and technical information."

a. What is the nature and scope of NTIS's exclusive distribution agreements for each of these sources? Would or could NTIS take legal action to prevent others from selling the same information products in the United States?

b. Does NTIS distribute all publications issued by the sources listed in the January announcement? Does the use of the term "exclusive" suggest that all publications are available from NTIS?

c. What are the terms under which NTIS serves as exclusive distributor of quasi-governmental sources such as the International Labor Organization, International Atomic Energy Agency, and International Telecommunication Union? Why did NTIS seek exclusive distribution rights? Do the agreements between these organizations and NTIS supplant private sector distribution channels for these publications?

d. To what extent do these exclusive distribution arrangements generate net revenues that contribute to NTIS overhead and losses? Do the agreements result in higher prices to the public than would otherwise be charged by another distribution mechanism?

ANSWER:

a. The word "exclusive" was used by the ad copy writer in the sense that only NTIS is currently making some of these previously untapped sources of information available to the public. There are no restrictions on others using the same materials on a commercial basis, and NTIS would not take legal action to prevent others from selling the same information in the United States.

b. NTIS generally does not distribute the material which is used to prepare the news articles in the Foreign Technology Abstract Newsletter. NTIS does offer to put newsletter readers who need additional information in contact with the sources of that information. NTIS does offer for sale most of the foreign publications cited by the abstracts section of the newsletter. These foreign publications come to NTIS through its normal acquisitions and are offered on a non-exclusive basis.

c. As stated above, NTIS does not have exclusive arrangements with these sources; and, therefore, NTIS distribution does not supplant private sector distribution channels for publications of quasi-governmental sources.

d. As answered above, NTIS does not enter into such exclusive arrangements.

New York University
A private university in the public service

Division of Libraries, New York University Press, University Archives
Elmer Holmes Bobst Library
Office of the Dean

70 Washington Square South
New York, N.Y. 10012
Telephone: (212) 998-2445

July 24, 1989

The Honorable Robert E. Wise
Chair, Government Information, Justice
and Agriculture Subcommittee
B-349-C Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Wise:

Enclosed are my responses to the supplemental questions you attached to the transcript of my testimony of May 23 on behalf of the American Library Association on Federal Information Dissemination Policies and Practices. As I mentioned in my note forwarding the corrected transcript, the questions required additional time for research and response.

At the American Library Association recent meeting in Dallas, Texas, I conferred with many of my colleagues more familiar with several of the complex issues you raised in your questions. I also compiled extensive documentation to supplement my remarks.

I trust you will contact me should you require additional information or discussion. Thank you again for affording us the opportunity to present our views to your Subcommittee. I wish you the very best in future consideration of these issues.

Sincerely,

Nancy C. Kranich
Director, Public and
Administrative Services

attachments
/nk
nan447

STATEMENT OF
NANCY C. KRANICH
ON BEHALF OF
THE AMERICAN LIBRARY ASSOCIATION

BEFORE THE
SUBCOMMITTEE ON GOVERNMENT INFORMATION, JUSTICE AND AGRICULTURE
ON
FEDERAL INFORMATION DISSEMINATION POLICIES AND PRACTICES

MAY 23, 1989

Additional Questions for Nancy Kranich

1) In your testimony, you referred to the depository library program as a "safety net for public access". Are there any formal studies showing the extent to which federal documents in depository libraries are used or the categories of individuals who use the documents?

Users of Academic and Public GPO Depository Libraries, a recent study of the use and users of depository libraries, was released in the spring of 1989 by the Government Printing Office. Authors Charles McClure and Peter Hernon surveyed depositories and estimated that a minimum of 167,000 people use Government depository materials each week in academic and public libraries. A breakdown of demographic characteristics of survey respondents by gender, education, and occupational status is included. Numerous other studies are cited and the findings compared.

In addition to independent studies, the Government Printing Office administers its own questionnaire called the Biennial Survey. The results of the Biennial report on the condition of depository libraries provide a profile for the GPO of the program's status and of meaningful statistics about services.

2) I would like to get a better idea of extent to which federal publications fail to reach depository libraries.

a) Can you provide any estimate of the number or percentage of fugitive documents that are printed by agencies but that are not sent to depository libraries?

Estimates about the number of fugitive documents vary from 10% to 40%; knowledgeable documents librarians put the number around 30%. It is difficult to provide an exact percentage because many items are erratic in receipt, others were discontinued or privatized, some failed to enter the depository system, others were delayed in conversion to microfiche, or agencies delayed publication. Many of the publications not getting into the program are printed or procured by Government agency field operations. Agencies are required to provide two copies of publications not printed through GPO to the Superintendent of Documents for listing in the Monthly Catalog of U.S. Government Publications. If GPO has not received paper copies of these publications, it will produce microfiche copies of them for the depository libraries. It has been difficult during the past two years to determine how successful this program has been due to the backlog in microfiching production at GPO which resulted when the contractor failed to deliver a satisfactory product and then subsequently defaulted.

b) Please provide specific examples of federal documents that were published but not made available to depository libraries.

Many of the missing publications are those that are now published on floppy disk or compact disk, such as those published by the National Science Foundation and the U.S. Geological Survey. Others have been absorbed into electronic bulletin boards, such as the Department of Commerce Economic Bulletin Board. In some cases, agencies are not printing paper copies of time-sensitive publications, such as news releases and current statistical analyses. Other publications are produced under various types of contracts with the private sector. Some agencies, such as the Equal Employment Opportunity Commission (EEOC), provide copies of their decisions and certain staff support to a company in return for copies of an index. Recently, EEOC has claimed that this is a private publication and not subject to depository distribution, although EEOC sends FOIA requestors to this company.

By their nature, fugitive documents are difficult to identify. However, GPO is working with librarians to document the status of publications not distributed through the depository library program (see attached "Whatever Happened To...??? for examples). Some recent journal articles written by librarians have tracked the status of items that failed to enter the DLP (see attached article by Sears and Lewis which includes extensive appendices listing reports and a bibliography prepared in March 1989 by Cynthia Bower listing fugitive publications).

c) What formal actions have been taken by the ALA or by depository librarians themselves to convince agencies to make fugitive publications available to depository libraries? Please cite as many specific instances as possible.

The American Library Association's Government Documents Round Table (GODORT) has taken a number of formal steps to encourage government agencies to fulfill the 1962 Depository Act, which for the first time, required agencies to provide non-depository publications to depository libraries. GODORT has set up a Census Advisory Committee, has participated in the Cartographic Advisory Committee, and has established an "adopt an agency program", where librarian volunteers work with agency officials to educate them about the depository library program. ALA members have spoken to groups that represent agency publishers and public affairs officers, such as the Federal Publishers Committee. In addition, ALA representatives have testified at numerous public hearings held by agencies, such as the Environmental Protection Agency and the Department of Energy. ALA has also distributed copies of its brochure describing the depository library program to Members of Congress and to agencies. On the national, state, and local levels, several GODORT groups have invited agency publishers to speak at their conventions and other meetings.

ALA members, along with members of other major library organizations, have participated in the Depository Library Council to the Public Printer (see attached examples of depository library council recommendations and GPO responses), the Patent Depository Library Association, the Ad Hoc Committee on Depository Library Access to Automated Data Bases (Joint Committee on Printing), the Census State Center Program and other advisory committees. Depository librarians and other ALA members advise, on a regular basis, the Government Printing Office, the Joint Committee on Printing, the Appropriations Committees, and government agencies of documents not in the system. Some librarians have printed up forms, citing title 44, section 1903, that ask agencies to provide copies to the depository library program. Many librarians also contact agencies directly on a regular basis.

As a result of these efforts large bodies of government publications have been brought into the system, such as all Congressional committee prints, some 14,000 Department of Energy technical reports, all of the General Accounting Office publications, contract reports of the Office of Technology Assessment, technical reports of NASA, maps from the U.S. Geological Survey, Federal Emergency Management Agency, Defense Mapping Agency, National Ocean Survey, Agriculture Department and other agencies.

d) Is the ALA satisfied with the management of the depository library program by the Government Printing Office. Is the ALA satisfied with oversight of the depository library program?

The Government Printing Office has managed the depository library program for almost a hundred years. Over the years, ALA has directed its commendations and concerns to GPO and its Congressional oversight committees, the House and Senate Legislative Appropriations Committees, and the Joint Committee on Printing, through resolutions such as the two attached examples on the GPO microfiche conversion program and the paper distribution of the Congressional Record. Both Congress and GPO generally have been supportive of the Depository Library Program.

GPO officials regularly meet with the depository library community through its depository library council, attend all major library association meetings, hold regular workshops for depository librarians and implement many of the suggestions for improvement made at those meetings. GPO distributes a frequent newsletter and inspects libraries on a regular basis.

Service effectiveness varies with the resources available and the people running the program, just as in any other agency in the government. Total appropriations for the Depository Library

Program dropped from $23,919 in FY 1985 to $20,240 in FY 1988. When GPO has fallen down in providing service, the Joint Committee on Printing has stepped in and investigated. A good example is when the former Public Printer decided that the depository libraries would receive the Congressional Record only in microfiche. The Joint Committee on Printing directed the GPO to continue to provide choice of format to the libraries. The Committee also holds hearings and addresses problems publicly, such as the microfiche contracting failure. To remedy such problems, the Joint Committee on Printing has asked the General Accounting Office to conduct more than a dozen audits of GPO during the last ten years.

e) Is there a need for statutory changes in the depository library program? If so, please indicate what amendments are needed and what the amendments would accomplish?

Sandra McAninch recently represented the American Library Association at a hearing before the Subcommittee on Procurement and Printing of the Committee on House Administration. In her testimony (see attached), Ms. McAninch made several recommendations for statutory changes. I believe her presentation clearly indicates what amendments are needed and what they would accomplish.

3) Library associations have been participants in some recent Freedom of Information Act lawsuits. I would like to find out more about libraries use of the FOIA.

a) Do libraries make many requests under the FOIA? Any statistical or anecdotal information will be welcome.

Libraries have often made use of the FOIA on various occasions. For example, the National Security Archive, has submitted extensive requests: 2000 over the past 4 years which, the results of which are cataloged, indexed, and made available to researchers. Another example is the Institute of Governmental Affairs Library at the University of California - Davis, which has extensive FOIA experience with the U.S. Department of Agriculture in relation to its collection on migrant labor. Unfortunately, many libraries have been discouraged from using FOIA by the exclusion of certain libraries from fee waivers. Others cannot wait so long for the information they may need.

Individual librarians have also submitted FOIA requests to the government. In one recent example, Paula Kaufman of Columbia University filed a FOIA request about a specific FBI Library Awareness Program visit to Columbia. Documents resulting from this request, when compared to documents received by other requestors, demonstrated inadequate responsiveness by the FBI under the FOIA, and resulted in a court order stipulating that the FBI process over 3,000 additional pages related to the program and release them to the National Security Archive.

When I learned that the U.S. Department of Energy's Office of Scientific and Technical Information (OSTI) had restricted the audience of their reports at certain depositories, I brought this issue to the attention of the National Security Archive (NSA). At my request, the NSA initiated a FOIA request asking for a listing of the restricted reports. After several levels of review, the Energy Department's Office of Hearings and Appeals determined that reprogramming of computers, in some cases, should be considered appropriate and necessary to the FOIA search process, and resulted in the release of a list compiled from a computerized database through a search algorithm not normally employed by OSTI. This decision sets excellent precedent in regard to the status of records on computer tape; it has been referred to by the Office of Technology Assessment in its report Informing the Nation as the case that "may help change the tenor of future debate." (p. 219)

While libraries have made a limited number of requests under the FOIA, they have actively assisted users in initiating agency queries. Among the most popular documents available through depository and other libraries which is used by researchers for this purpose are the 1977 and 1987 editions of your Subcommittee's "A Citizen's Guide on Using the Freedom of Information Act and the Privacy Act of 1974 to Request Government Records." Also available are the ACLU's "Using the Freedom of Information Act: A Step-by-Step Guide," the Fund for Open Information and Accountability's (FOIA, Inc.) "Using the Freedom of Information Act," and other useful manuals published by a variety of groups. I have attached a copy of a bibliographic guide on this topic produced for New York University's library users in 1988.

b) If a FOIA request is made by a library, is the request more likely to be made on behalf of the library itself or on behalf of a customer.

The request is made either way, depending on the individual, but the library will generally catalog and maintain a copy of the results of the request for public use.

c) How should a library be categorized for purposes of assessing fees under the FOIA? Does the answer vary if a request is submitted by a library at the request of a specific customer?

Libraries should be granted fee waivers under the FOIA. (See attached resolution passed by the American Library Association in January 1989.) As the Congressional sponsors of the 1986 FOIA amendments noted, waivers are intended for any request not sought solely for private, profit-making purposes, but for dissemination to the public. As such, non-profit libraries should qualify. Even if a request is submitted by a library on behalf of an individual user, others can also gain access to that item once it is added to a library's collection. Consequently, because libraries which use the FOIA are not necessarily requesting items solely for individual use but for broader public use, they should be granted fee waivers.

4) In a 1986 report (House Report 99-560), the House Committee on Government Operations criticized the National Library of Medicine for restricting access to information in the MEDLARS system, for charging prices that were not based on cost, and for exercising copyright-like controls over the data.

a) Does the ALA support these information dissemination policies of the National Library of Medicine? If not, has the ALA ever objected to NLM's policies?

ALA recognizes that the National Library of Medicine is governed by its own specific enabling statute, Public Law 84-941. Numerous debates have ensued relative to the Library's charging policy and terms of use of the MEDLARS database. Studies and audits by the Department of Health, Education and Welfare, (1975), the General Accounting Office (GAO), (1979), GAO (1982), OTA (1982) and the Department of Health and Human Services (1983) have all reaffirmed that the NLM has produced and distributed its information products and services consistent with legislative mandate. The Association believes that NLM has adequately performed its charges under its enabling legislation.

ALA has always supported depository library access to all unclassified government information of public interest or educational value which would include NLM products. However, no specific effort has been made by ALA to target NLM's dissemination policies. The Medical Library Association (MLA) has monitored NLM's policies for a number of years and you may wish to consult with them on this topic.

b) Should GPO play a role in the electronic dissemination of MEDLARS information?

Yes, at least to the extent that GPO would coordinate depository library access to MEDLARS information.

5) In testimony before the Subcommittee on Procurement and Printing, a representative of the Office of Technology Assessment stated that "OTA concluded that a mandatory electronic publishing role for GPO would conflict with the already strongly decentralized, competitive electronic publishing environment within the Federal agencies." Does the ALA agree with this conclusion?

Our major concern is broad public access to electronic information. To the extent that such decentralization would make public access more difficult and circumvent dissemination to depository libraries, ALA would be concerned. Bibliographic and physical access must be assured at reasonable costs. Even when computing services are distributed, users are best served when databases are available through centralized access points and networks. Our experience with non-GPO imprints for print material supports centralization. Clearly, whatever mechanism is chosen for dissemination, agencies must comply with broad public access mandates, including the depository library program administered by the Government Printing Office.

Currently, GPO coordinates the procurement of electronic publishing systems for agencies, such as the Army 50S contract. The actual contract services are provided in computers outside GPO, thereby giving the appearance of a decentralized system.

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Question 2. b)
([illegible])

WHAT EVER HAPPENED TO . . . ? ? ?

AN-v10-#7-4/89

1989-04

DATE March 17, 1989

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CLASS NO.	ITEM NO.	STATUS
A 13.69/10:	0079-D-02	Publications Quarterly List, October-December 1987 (P) and April-June 1987, will not be sent to depository libraries as the agency was not able to furnish sufficient copies for distribution.
C 55.2:C 73	0250-E-02	NOAA Visual Communications Standards LPS did not receive sufficient copies of this title to make complete distribution to all libraries and rain checks were furnished to libraries not receiving this publication. (mailed on shipping list 89-61) However, the agency has now informed LPS that the cost of reprinting this issue is prohibitive and we regret that no rain checks will be honored.
D 1.2:B 29	0306	Base Realignments and Closures, A Report to the Defense Secretary's Commission, December 1988. The agency has informed LPS that this title will be distributed in microfiche format instead of paper format because the agency cannot furnish paper copies.
ED 1.310/2:	0466-A-03	Fall Enrollment in Colleges and Universities 1983 edition was the last issue mailed to depository libraries. Later issues of this title have been ordered from the agency and will be distributed at a later date.
HE 23.10:	0529-A-01	Human Development News The last issue distributed was Fall 1985. The agency plans to continue publishing this title but due to budget cuts no date for delivery can be furnished.
		The following publications will not be distributed to libraries as the cost of reprinting these titles is prohibitive:
P 1.26:98A	0837-H	Prime Space Available Now
Pr Ex 3.10/4:B 39/6/ sh. 6	0856-A-01	Beijing Sheet 6
Pr Ex 3.10/4:M 28/2	0856-A-01	Mainland Southeast Asia
Pr Ex 3.10/4:W 52 b/4	0856-A-01	West Bank and Vicinity

. EVER HAPPENED TO . . . ? ? ?

AN-v10-#7-4/89

1989-05

DATE April 4, 1989

PAGE 1 OF 1

CLASS NO.	ITEM NO.	STATUS
AE 1.102:F 21	0569-B-02	Our Family, Our Town This publication will not be sent to depository libraries, the National Archives and Records Administration informed Library Services Program that this is not a Government publication as defined by Title 44 U.S.C.
ED 1.44:981	0455-A-10	Women's Educational Equity Act Program Annual Report Library Program Services has been informed by the Department of Education that no annual issues of this publication were published for the years 1981, 1983, 1984, 1985, and 1986.
Y 3.Ad 9/8:11/v.12, no.4	1049-D	Intergovernmental perspectives Library Program Services has been informed by the U. S. Advisory Commission on Intergovernmental Relations, that volume 12, number 4, of this publication was never published.
Y 3.H 71:12	1089	I Have A Dream Poster Library Program Services has determined since the material is dated and the cost of reprinting is prohibitive, no rain check shortages will be made on this publication.

Question 2. b)

AN-v9-n14-8/88

WHAT EVER HAPPENED TO . . . ? ? ?

1988-12

DATE July 12, 1988

PAGE_____OF_____

CLASS NO.	ITEM NO.	STATUS
D 101.106/3: D 301.101:	321-B-1 424-B-14	Recruiter Journal Intercom Both of these titles were designated MF format due to the recommendation of the Depository Library Council. The format must be changed back to Paper as the size of both the Recruiter Journal, and Intercom makes them too large to microfiche (larger than 8½ x 11). Back issues of both journals cannot be supplied.
LC 30.6:In 8	815-B	On Shipping List 88-340-P, The Library of Congress Rule Interpretations, First Edition, was mailed to depository libraries with no index included. The cataloging distribution service at the Library of Congress informed LPS that the index will be mailed in a package with Update #3 at a later date.
S 9.10:	899	Treaties and Other International Act Series, was ceased after the last issue dated September 1987, printing will start again in 2 months, and will be distributed to depositories.

WHAT EVER HAPPENED TO . . .

1988-13

DATE July 2.

PAGE 1 OF 1

CLASS NO.	ITEM NO.	STATUS
A 13.2:	0084	Agriculture Department will not be able to furnish copies of Appraisal Report Estimating Fair Market Rental Value of Grazing on Public Lands, Vol. 1.
A 77.1:984	026-A-5	Agriculture Department will not be able to furnish copies of Research Progress in 1984. A report of the Agricultural Research Service.
A 93.18/3:985/4	042-T-1	Agriculture Department will not be able to furnish copies of Reports for USDA's Economic Research Service Winter 1985/86.
A 93.41/2:3/1	021-N-6	Agriculture Department will not be able to furnish copies of RDP, Rural Development Perspectives, Vol. 3, Issue 1, October 1986.
A 93.41/2:3/3	021-N-6	Agriculture Department will not be able to furnish copies of RDP, Rural Development Perspectives, Vol. 3, Issue 3, June 1987.
AE 1.102:M 58	569-B-2	National Archives and Records Administration will not be able to furnish copies of Microfilm Rental Program.
C 55.229/3:	273-D-8	Packaged Literature Search is not being printed at this time. The last issue published and distributed was March 1986.
C 61.12:88-06	231-B	Overseas Business Reports will be redistributed when we receive the corrected copy of the May 1988 issue.
SI 1.2:P 83/700/76	910	American Colonial Portraits is not a Government publication as defined by 44 U.S.C. This publication will no longer be distributed.

[redacted]

— Question 2. b)

Government Publications Review, Vol. 15, pp. 323–341, 1988
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0277-9390/88 $3.00 + .00

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CURRENCY OF SELECTED U.S. FEDERAL GOVERNMENT AGENCY ANNUAL REPORTS RECEIVED BY DEPOSITORY LIBRARIES

JEAN L. SEARS and MARGARET A. LEWIS
King Library, Miami University, Oxford, OH 45056, USA

Abstract — A selection of U.S. government annual reports from the *List of Classes* was examined for currency of receipt. Holdings, latest depository issue received, date received, and entries in *American Statistics Index* were examined for each report. The reports were then categorized as current, not current, current not received, and discontinued. The titles of these reports, except for the current category, are listed in the appendices. Regularity of receipt and microfiche as a factor in current receipt were also considered. Slightly more than half of the reports in the study were found to be current; many of these were erratic in receipt. The study indicates that lack of currency was often due to discontinuation, failure of the publication to enter the depository system, delay in conversion to microfiche, or an agency's delay in publication. No strong evidence of delay in Government Printing Office in-house processing of materials was found.

The *List of Classes of United States Government Publications Available for Selection by Depository Libraries* (GP3.24:) is an important administrative and reference tool for United States government depository libraries. Libraries can choose which Superintendent of Documents number series they wish to receive by selecting the appropriate item numbers from a list of more than 150 pages. Not only is the *List of Classes* the basis for collection development but it also serves as an outline of materials available on the shelves in a SuDocs-arranged documents collection. For example, librarians can quickly find the call number for the Pesticide and Toxic Substances Office and get an overview of the types of publications likely to be available from that office.

When using the *List of Classes* to identify useful series for answering reference questions, however, the series selected is often found not current. Many times the librarian goes to the shelflist or the shelves only to find that the last publication received is several years old. Are these series really current and available? This article examines a number of series from the *List of Classes* for currency.

There have been no previous articles on the currency of item numbers available for selection. The *List of Classes* is sometimes mentioned in descriptive material on depository item selection, as in Morehead [1]. Less frequently, it is discussed as a reference tool, such as in Sears and Moody [2]. Hernon and Purcell have conducted a study on which items are selected by depository libraries [3], but the currency of the items that are supposedly available for selection is not discussed.

Jean Sears is Head Documents Librarian at Miami University and the co-author, with Marilyn Moody, of *Using Government Publications*. She and Moody have also co-authored two previous articles in *Government Publications Review*.

Margaret Lewis received her M.S.L.S. from the University of Kentucky in August 1982. She is currently Documents Librarian in charge of the federal documents collection at Miami University.

METHODOLOGY

A list of 440 agency annual reports was made using the September 1986 edition of the *List of Classes;* some biennial and semiannual reports were also included. To keep the number of reports manageable, purely statistical reports and reports relating to research results were not included. Several commission annual reports in the Y3 SuDocs classification were included. Commission publications often appear on the *List of Classes* as a single category called "Reports and Publications." If an annual report had been received from the commission, an annual report category was assumed to exist and it was included on the list. One series contained more than one annual report: HE20.3001/2:, "Annual Reports of Committees, Councils, etc." Individual annual reports within the series were identified and each was listed as a separate report.

Any reports not selected by Miami University were dropped from the list since it would not be possible to determine easily whether they were current or not. Miami University selects 80 percent of currently available depository items and an estimated 95 percent of annual reports, so only 23 reports were dropped from the list at this time. Holdings for each remaining report were noted, as well as the year of the latest depository copy received and the date on which it was received. All reports were then checked in the *American Statistics Index (ASI).* Although *ASI* covers only statistical reports, many of the annual reports contain statistics and were included. If the report was found in *ASI*, several things were noted: latest year issued; changes in SuDocs number, titles or issuing agencies; years not issued; and suspension or discontinuation notices. *ASI* was checked through June 1987. The *Monthly Catalog of United States Government Publications* was not consulted since its coverage of annual reports was more likely to reflect primarily depository receipts.

The annual reports were then analyzed and divided into four categories: *current, not current, current not received,* and *discontinued.* A small number of problem reports were dropped from the list due to insufficient data or because the report no longer met the established criteria. The final list consisted of 412 reports.

A *current* annual report was generously defined as one that had been received on deposit within the last three years. The year covered was not considered. Therefore, an annual report for which the last issue received was 1982, but that issue had been received in 1986, was called current. This was done to take into account publishing lag time, as well as possible time lapses involved with depository receipts. The cutoff time between current and not current receipts was set at July 31, 1984.

Not current was defined as an annual report which had not been received for more than three years — since July 31, 1984. The reports in this category were either no longer being issued, were being issued but not sent to depository libraries, or were issued several years late. It was not possible to confirm which of these possibilities was actually true.

Current not received annual reports were defined in two ways. These could be reports that depositories have not received for more than three years but which *ASI* cites at least two issues as having been published during that time. Or these could be reports for which *ASI* lists three or more issues published since the last depository receipt, although the date of the last receipt may be within the last three years.

Discontinued reports are those for which discontinuation or suspension notices were found in *ASI*.

Definitions were adjusted commensurately for reports of other frequencies. An issue of a biennial report had to be received within six years to be current and a semiannual report within one and a half years. These status categories apply only to the class number

Table 1. Number of Reports in Each Category

	Number	Percentage
Total Reports Examined	412	100.0
Current	220	53.4
Not Current	80	19.4
Discontinued	72	17.5
Current Not Received	40	9.7

examined, not to other class numbers that may share the same item number. The placement of a report in the *not current* category does not necessarily mean that the entire item is not current, only the particular class listed.

Finally, annual reports were checked against the latest available edition of the *List of Classes* (June 1987) for any changes since the project was begun and holdings again were checked for any new receipts that might change the status of a report. Receipts reported in this article are current through August 11, 1987.

RESULTS

The final list of annual or biennial reports examined totaled 412 reports. Of these, 220, or 53.4 percent were deemed *current*. Table 1 shows the totals and percentages for each of the four categories.

Current Reports

Slightly more than half of the reports examined were *current*, meaning an issue had been received within the last three years. There were five reports where the last issue received was the 1982 report, and 24 where the last issue was 1983. For the remainder (191), the last report was dated 1984 or later. The date of publication and the date of receipt were compared for the 1982 and 1983 reports. A few publications had no date of publication. Of four 1982 reports for which both dates were available, all were received during the same year they were published. Of the 17 1983 reports with both dates, 13 were received less than a year after publication. This would indicate that the lag in receipt is not due to delay by the Government Printing Office in depository distribution, but to delay in the date of publication.

Many of the reports in all categories are not indexed by *ASI*, so information regarding discontinuation or most recent issue published could not always be obtained independently. The actual number of current reports may be even lower than the results of this study show. In the *current* category, 62 out of 220 reports were not indexed in *ASI*.

Not Current Reports

The next largest category of reports is the *not current* category — reports for which issues have not been received for more than three years. There were two instances where an annual report had not been received since the 1971 issuance (EP 1.1:, T34.1/2:). In four cases, no holdings were found (i.e., C 55.401:, HE 20.5312:, HE 20.9413:, J 1.27/2:). The reports in this category are in actuality either *discontinued*, *current not received*, or much delayed in publication. A large number of the reports in this category, 70 out of 80, are not indexed by *ASI*, so currency or discontinuation could not be confirmed. The best way to determine the status of these reports was to telephone the issuing agencies, which the authors did not have the resources to do. (See Appendix I for reports in this category).

Current Not Received Reports

Current not received reports are all indexed in *ASI*. The *ASI* index shows that the reports are still being issued, although they are apparently not being sent to depository libraries. The average number of issues listed in *ASI* but not received for reports in this category is 4.1. There may be other reports that would have fallen in this category, but since they were not covered by *ASI* that information was not available to make a determination and therefore such reports were categorized as *not current*. Based on the fact that there are about twice as many *discontinued* reports as *current not received* reports, it is possible to theorize that one-third of the *not current* reports might actually be *current not received*. This could increase the percentage of *current not received* reports to as much as 21 percent.

One particularly glaring example in this category is *Progress in Prevention and Control of Air Pollution, Report to Congress* (EP4.16:, Item 483-E-07). Depositories were sent only the 1974 issue. This report has been issued annually through 1985 (1987 *ASI*, supp. 2, #9194-4). The annual report of the Marine Mammal Commission is similar (Y3.M33/3:1). No issues have ever been sent on deposit, but the report appears regularly in *ASI* through 1985 (1986 *ASI*, #14734-1). *ASI* does not state that these reports are depository, but their presence on the *List of Classes* implies that they are or should be.

Another unusual situation arose with I70.18:, which is listed in this category. The last depository issue (1982) was sent under a different and presumably more current call number: I29.108. That number does not appear on the *List of Classes*, although the I70.18: number still does. Issues for 1983, 1984, and 1985 have been published but not sent to depository libraries under either number. (See Appendix II for reports in this category.)

Discontinued Reports

A large number of class numbers have been discontinued or suspended according to *ASI*. Some of the discontinuations reflect reports that have been combined with other titles or are being issued under another call number; 25 out of 72 discontinued series fall into this category. For example, both HE23.1309: and HE23.1309/2: appear on the *List of Classes*. These are earlier numbers for HE23.1301:, which is also on the *List of Classes*. In five other instances data is duplicated in another source. Many of the *not current* reports which are not indexed in *ASI* may actually be *discontinued* reports but this could not be determined. If the proportion of *discontinued* reports versus *current not received* reports is used as a guideline, it is possible to estimate that about two-thirds of the *not-current* reports may actually be *discontinued*. This could increase the percentage of *discontinued* reports to as much as 30 percent. (See Appendix III for reports that have been discontinued.)

MICROFICHE

A high percentage of annual reports in all categories is distributed in microfiche, according to the item numbers. The numbers and percentages for each category are listed in Table 2.

Although the percentage of *not current* reports in microfiche is slightly higher than the percentage for other categories, it is difficult to say from this data alone whether a delay in converting to microfiche is contributing to the apparent noncurrency of any of these

Table 2. Number of Reports in Microfiche

	Total	Microfiche	Percentage
Not Current	80	70	87.5
Discontinued	72	59	82.0
Current	220	154	70.0
Current Not Received	40	28	70.0

reports. Superintendent of Documents Policy Statement No. 13 (SOD 13, Aug. 22, 1983) states that while annual reports for major agencies will be distributed in paper, most smaller agency reports will be distributed in microfiche [4]. This policy was essentially suspended by a supplementary list of publication categories that the Depository Library Council recommended be converted to microfiche at their Spring 1986 meeting. Annual reports (except for significant statistical compilations) were on this list, further insuring that such reports would be in microfiche [5]. The Government Printing Office replied that it would implement the recommendation "to the maximum feasible extent" [6]. SOD 13 was reinstated in its original form following another recommendation by the Depository Library Council at the Spring 1987 meeting. Items already converted to microfiche, however, remained in microfiche [7]. Since a majority of these reports are in microfiche, it is difficult to find significant differences between the various categories. Further complicating the issue is the fact that although an item is designated microfiche, individual reports are sometimes received in paper.

Since the category differences were not particularly useful in determining the effect of microfiche conversion on receipt, a subgroup of 121 *current* reports (the same subgroup used for analyzing erratic receipts below) was analyzed for the difference between the date of publication and the date of receipt. The most recent issue available was examined for each annual report in the subgroup. The reports examined were almost evenly divided between microfiche issues and paper issues. Complete results are shown in Table 3.

Delayed reports were more likely to be in microfiche than paper. Of 25 reports received more than one year after the publication date, 20 were in microfiche and 5 were in paper. Sixty-five and one-half percent of microfiche reports were received within one year of publication, whereas 92.1 percent of paper reports were received within one year. These results indicate that there is a delay in receipt of microfiche reports. The reports

Table 3. Difference Between Year of Publication and Year of Receipt: Paper vs. Microfiche for Most Current Issue of Selected Current Reports

	Paper	Percentage of Paper Total	Microfiche	Percentage of Microfiche Total
Received Within 1 Year of Publication	58	92.1	38	65.5
Received Within 2 Years of Publication	4	6.3	16	27.6
Received Within 3 Years of Publication	1	1.6	3	5.2
Received Within 4 Years of Publication	0	0	1	1.7
Total	63	100	58	100

Table 4. Current Reports With Issues Missing Most Recent Five Years

	Number	Percentage
Total	121	100.0
Zero Issues Missing	67	55.4
One Issue Missing	33	27.3
Two Issues Missing	11	9.1
Three Issues Missing	8	6.6
Four Issues Missing	2	1.6

listed in the *not current* and *current-not-received* categories may therefore include some reports that are actually current, but delayed due to microfiche conversion.

ERRATIC RECEIPTS

Receipt is often erratic even among the *current* reports. A subset of current annual reports was further analyzed for missing issues. Reports that had been depository items for five or more years and that were also indexed in *ASI* were selected. Depository receipts were checked for the five years prior to the latest annual report received. Missing years were then checked in *ASI* to make sure they existed. In many cases no report was issued by the agency. If a report was issued, however, it was then counted as a missing issue. In five instances *ASI* indicated that the missing report was a limited or no distribution publication even though the series as a whole was depository. These were still counted as missing reports (results are shown in Table 4). Slightly more than 44 percent of the reports had one or more issues missing for the most recent five years received.

GOVERNMENT PRINTING OFFICE ACTIVITIES

The Government Printing Office (GPO) is aware that some of the items on the *List of Classes* are not current. Staff members have, at various times, attempted to correct some of the problems. In a May 1983 *Administrative Notes* there was a paragraph on a project to identify and delete discontinued item numbers from the item number database [8]. In July 1983, there was again mention of GPO's attempt to identify and delete discontinued items from the *List of Classes* [9]. At this time the project was said to be half completed and no further progress was reported in *Administrative Notes*. At the June 1987 American Library Association annual conference, however, representatives from the Government Printing Office again said that they were working on identifying and deleting non-current items. Staffing vacancies were cited as a reason for delays on many projects.

CONCLUSION

A large number of the series in the *List of Classes* are not current. The number of reports identified as *current not received* indicate some problems in GPO acquisition of publications for depository distribution. The number of reports identified as *discontinued* indicate lack of communication between GPO and government agencies. The number of *not current* reports and the erratic receipt of many *current reports* further substantiate that there are problems in these two areas.

The data in this study indicate that there is no significant delay in the *processing* of materials within the GPO. Materials not received are either discontinued or are completely bypassing the depository system. There is evidence of delay in converting reports to microfiche format. Delay in actual publication by the agency could also be a factor.

The Government Printing Office has had difficulty finding the resources to take a more active role in investigating apparently non-current item numbers. This is a desirable project, however, and one the depository community should encourage and lend its assistance to in any way possible. The list of not current reports provided in Appendix 1, for example, might be a starting point. GPO or other depository librarians may have the resources to further investigate the status of these reports. The project of GODORT's Ad Hoc Committee on Discontinued Documents to develop a database of discontinued documents should be of tremendous value to GPO and depository librarians in updating their records [10]. Perhaps one day the *List of Classes* can more truly reflect what is available to depository libraries.

NOTES

1. Joe Morehead, *Introduction to United States Public Documents*, 3rd ed., (Littleton, CO: Libraries Unlimited, Inc., 1983), 79–85.
2. Jean L. Sears and Marilyn K. Moody, *Using Government Publications*, Vol. 1 (Phoenix, AZ: Oryx Press, 1985), 8, 25, 170–4.
3. Peter Hernon and Gary R. Purcell, *Developing Collections of U.S. Government Publications*, Foundations in Library and Information Science, Vol. 12 (Greenwich, CT: JAI Press Inc., 1982), 39–54.
4. "Superintendent of Documents Policy Statement," *Administrative Notes* 5 (May 1984): 7, item i.
5. "SOD-13 Guidelines," *Administrative Notes* 7 (May 1986): 2, 27.
6. "Depository Library Council Recommendations March, 1986," *Administrative Notes* 7 (Oct. 1986): 16.
7. "Responses to the April 1987 Depository Library Council Recommendations," *Administrative Notes* 8 (Oct. 1987): 8–9.
8. "Discontinued Item Numbers," *Administrative Notes* 4 (May 1983): [2].
9. "Discontinued Item Numbers," *Administrative Notes* 4 (July 1983): 9.
10. "Discontinued Federal Documents & Information," *Documents to the People (DttP)* 15 (Sept. 1987): 170–1.

APPENDIX I
Not Current Reports

SuDoc	Item	Title	Last Year Received	Date Received
C 13.1:	238 (MF)	Annual Report (National Bureau of Standards)	1977	6/79
C 51.1:	188-A-07 (MF)	Annual Report (National Technical Information Service)	1977	12/78
C 55.43:	250-E-26 (MF)	Office of Marine Pollution Assessment Annual Report	1981	3/84
C 55.401:	189-A (MF)	Annual Report (National Ocean Service)	None received	
CC 1.50:	285-B	Major Matters Before the Federal Communications Commission	1983	6/83
D 1.1/3:	306-A-01 (MF)	Annual Report of the Secretary of Defense on Reserve Forces	1976	9/77
D 103.57/3:	337-B-04 (MF)	Institute for Water Resources: Annual Report	1980–1981	9/82
D 209.1:	418-C (MF)	Annual Report (Naval Facilities Engineering Command)	1982	3/84
D 301.1:	421-G (MF)	Air Force Report, Report to the Congress	1982	9/83

APPENDIX I
(Continued)

SuDoc	Item	Title	Last Year Received	Date Received
D 304.1:	428-A (MF)	Annual Report (Air Force Medical Service)	1968	10/69
E 1.34/2:	429-T-46 (MF)	Congressional Budget Request, Department of Interior	1983	2/82
E 1.34/3:	429-T-46 (MF)	Congressional Budget Request, Department of Justice	1983	2/82
E 1.39:	429-T-13 (MF)	Voluntary Business Energy Conservation Program, Progress Reports	1978 (#6)	8/78
EP 1.1:	431-I-04 (MF)	Annual Report (Environmental Protection Agency)	1971	9/71
EP 1.43:	431-I-33 (MF)	Clean Water, Annual Report to Congress	1976	3/77
EP 1.69:	431-I-64 (MF)	Annual Report to Congress on Administration of the Marine Protection Research and Sanctuaries Act of 1972	1980	5/83
EP 5.19:	473-B-13 (MF)	Administration of the Pesticide Programs, Fiscal Year	1979	9/81
EP 6.11:	431-I-60 (MF)	Radiological Quality of the Environment	1977	11/77
FEM 1.101:	216-A-02 (MF)	Annual Report (United States Fire Administration)	1978	4/80
HE 17.28:	519-B (MF)	Annual Report of Welfare Programs	1974	2/76
HE 20.17:	483-A-01 (MF)	Annual Report of Health Insurance Benefits Advisory Council	1976	2/77
HE 20.3001:	506-G (MF)	Annual Report (National Institutes of Health)	1973	5/74
He 20.3027/3:	507-A-46 (MF)	Annual Report, National Cancer Advisory Board	1981–1982	2/84
HE 20.3032:	507-A-35 (MF)	Arthritis Interagency Coordinating Committee, Annual Report to the Secretary, HEW	1977	1/80
HE 20.3151:	507-G-18 (MF)	Annual Report (National Cancer Institute)	1980–1981	12/82
HE 20.3151/2:	507-G-17 (MF)	Division of Cancer Research Resources and Centers: Annual Report	1979–1980	8/80
HE 20.3263:	505-A-06 (MF)	Microbiology and Infectious Disease Program: Annual Report	1977–1978	1/79
HE 20.3321:	506-A-14 (MF)	Arthritis Program Annual Report of the Director	1980	6/81
HE 20.3351:	506-D-07 (MF)	Annual Report (National Institute of Child Health and Human Development)	1982–1983	2/84
HE 20.3362/7:	506-D-02 (MF)	Section on Nutrition and Growth of the Clinical Nutrition and Early Development Branch, Report to the Advisory Child Health and Human Development Council	1979	4/79
HE 20.3551:	507-P-04 (MF)	Annual Report (National Institute of Environmental Health Sciences)	1982	1/83
HE 20.3851:	447-A-10 (MF)	Annual Report (National Institute on Aging)	1982–1983	2/84
HE 20.4036:	494-B-07 (MF)	Parklawn Computer Center, Annual Report	1977	6/78

APPENDIX I
(Continued)

SuDoc	Item	Title	Last Year Received	Date Received
HE 20.4038:	494-B-09	Food and Drug Administration and the Congress	1977–1978	5/79
HE 20.4114/2:	498-B-11 (MF)	Report of the Division of Biological Effects	1979	n/a
HE 20.5001/3:	486-E-03 (MF)	Report of the Administrator (Health Services Administration)	1979	11/80
HE 20.5010:	444-J (MF)	National Professional Standards Review Council, Annual Report	1976	3/77
HE 20.5311:	486-I-04	Alaska Native Medical Center, Annual Report	1975	4/76
HE 20.5312:	486-I (MF)	To the First Americans, Annual Report on Indian Health Program of the Public Health Services	None received	
HE 20.5409:	494-C	Annual Statistical Summary, Fiscal Year	1976	7/78
HE 20.6001/2:	507-H-05 (MF)	Energy Action Staff Annual Report	1976	n/a
HE 20.6001/3:	507-H-06 (MF)	Health Resources Opportunity Office, Annual Report	1980	6/81
HE 20.6001/4:	507-H-08 (MF)	Division of Long-Term Care, Annual Report	1976	8/77
HE 20.6101:	509-C (MF)	Annual Report (Health Planning Bureau)	1979	7/80
HE 20.6114:	509-A-08 (MF)	Assembling the Health Planning Structure, Annual Report	1977	8/78
HE 20.6219:	508-G-02 (MF)	National Reporting System for Family Planning Services, Annual Report	1975	12/77
HE 20.6701:	486-B-02 (MF)	Annual Report (Health Facilities Bureau)	1979	7/80
HE 20.7121:	499-F-11 (MF)	Program Plan by Program Area for Fiscal Year	1982	3/84
HE 20.8001:	497-D-04 (MF)	Report of the Administrator (Alcohol, Drug Abuse, and Mental Health Administration)	1980	n/a
HE 20.9413:	486-F-01 (MF)	Navajo Area Indian Health Service, Office of Environmental Health and Engineering, Annual Report	None received	
HE 22.210:	499-J-01 (MF)	Professional Standards Review Organization, Annual Report	1977	4/79
HE 23.1:	529-B-02 (MF)	Annual Report (Human Development Services Office)	1979	9/82
HH 1.1:	581 (MF)	Annual Report (Housing and Urban Development Department)	1982	12/83
HH 1.79/2:	581 (MF)	National Housing Production Report	1982	12/83
HH 1.82:	581-A-01 (MF)	Financial Management Capacity Sharing Program, Annual Report	1979	n/a
HH 1.85:	581-E-31 (MF)	Interagency Urban Initiatives Anti-Crime Program, Annual Report to Congress	1980	11/80
I 1.1/5:	601-G (MF)	Office of Water Research and Technology: Annual Report	1979	11/80
I 1.99:	601-D (MF)	Outer Continental Shelf Environmental Studies Advisory Committee: Annual Report	1976	4/77
I 27.57:	664-G	Project Skywater	1979	6/81
I 27.71/3:	664-E (MF)	Colorado River Basin Project (Annual Report)	1975	n/a

APPENDIX I
(Continued)

SuDoc	Item	Title	Last Year Received	Date Received
I 29.59/3:	646-V (MF)	Annual Report on the Archeological Programs of the Western Region	1977	3/79
I 49.1:	613-C (MF)	Annual Report (Fish and Wildlife Service)	1976	9/77
I 70.19:	624-E-05 (MF)	Cultural Properties Programs: Year-End Report	1979	11/79
J 1.1/5:	717-C-11 (MF)	Annual Report to the Congress on the Activities of the Rehabilitation Act Interagency Coördinating Committee	1980	7/81
J 1.27/2:	717-Z (MF)	Report of Attorney General Pursuant to Section 252(i) of the Energy Policy and Conservation Act	None received	
J 1.48:	717-U	Report of the Advisory Committee to the Administrator on Standards for the Administration of Juvenile Justice	1976	6/76
J 24.1/2:	967-C (MF)	Office of Deputy Director Operations, Annual Report	1972	7/73
J 26.1/4:	717-B-12 (MF)	National Advisory Committee for Juvenile Justice and Delinquency Prevention: Annual Report	1979–1980	4/81
J 26.24:	717-N-04 (MF)	National Institute of Law Enforcement and Criminal Justice: Program Plan Fiscal Year	1980	4/82
Ju 10.16:	717-Y-01 (MF)	Report on the Implementation of Title 1 and Title 2 of the Speedy Trial Act of 1974	1979–1980	11/80
PrEx 14.1/2:	856-E-03	Citizens Advisory Committee on Environmental Quality	1975	7/76
SBA 1.31:	901-A-01 (MF)	Annual Report to the President, Interagency Committee on Women's Business Enterprise	1980	4/81
T 1.41/3:	925-F-01 (MF)	Treasury Occupational Safety and Health Council, Annual Report of Safety Progress	1979	9/80
T 1.60:	923-A-05 (MF)	Federal Law Enforcement Training Center, Annual Report	1981–1982	3/83
T 34.1/2:	974	Report to the Public	1971	2/72
TD 1.1:	982-C (MF)	Annual Report (Transportation Department)	1981	1/84
TD 1.34/2:	982-C-11 (MF)	Department of Transportation Budget Program: Analysis of Fiscal Year DOT Program by Policy and RD&D Management Objectives	1977 (77–1)	8/77
TD 8.20:	982-D-16 (MF)	Annual Report on Public Information and Education Countermeasure of Alcohol Safety Action Projects	1975	2/76
Y 3.Ed 8/6:1	1063-E-01	Annual Report (National Advisory Council on Women's Education Programs)	1981	3/82
Y 3.Oc 2:1	1070-J	Annual Report (National Advisory Committee on Oceans and Atmosphere)	1984	6/84

APPENDIX II
Current Reports, Not Received

SuDoc	Item	Title	Last Issue Received	Date Received	Last Issue in *ASI*	*ASI*
A 68.1:	113 (MF)	Annual Report of the Administrator (Rural Electrification Administration)	1981	3/83	1984-1985	1986, #1244-3
A 82.301:	34 (MF)	Annual Report (Commodity Credit Corporation)	1981	12/83	1985	1986, #1824-1
C 21.1/2:	251 (MF)	Annual Report of Commissioner (Patent and Trademark Office)	1983	3/84	1986	1987, supp. 6, #2244-1
C 47.1:	271-A	Annual Report (United States Travel and Tourism Administration)	1982	n/a	1986	1987, supp. 5, #2904-6
E 1.27:	429-T-03 (MF)	Annual Report to the President and Congress on the State Energy Conservation Program	1980	n/a	1984	1986, #3304-1
E 1.45/2:	429-T-19	Electric and Hybrid Vehicles Program Annual Report to Congress	1982	4/84	1986	1987, supp. 4, #3304-2
E 1.47:	429-T-35 (MF)	Industrial Energy Efficiency Improvement Program, Annual Report	1980	3/83	1984	1986, #3304-8
ED 1.1/2:	455 (MF)	Administration of Public Laws 81-874 81-874 and 81-815, Annual Report	1980	7/82	1984	1986, #4804-10
EP 4.16:	483-E-07 (MF)	Progress in Prevention and Control of Air Pollution, Report to Congress	1974	9/75	1985	1987, supp. 2, #9194-4
FCA 1.1:	430-J-01 (MF)	Annual Report (Farm Credit Administration)	1981	1/84	1983	1987, supp. 6, #9264-2
FM 1.1:	433 (MF)	Annual Report (Federal Mediation and Conciliation Service)	1981	12/82	1984	1986, #9344-1
GS 1.1:	558 (MF)	Annual Report (General Services Administration)	1980	6/81	1983	1986, #9454-1[1]
HE 20.3028:	506-A-09 (MF)	Diabetes Mellitus Coordinating Committee, Annual Report to the Director of National Institutes of Health	1979	12/80	1986	1987, supp. 1[1] #4474-34
HE 20.3216:	507-E-09	National Heart, Lung, and Blood Institute's Fact Book for Fiscal Year	1982	10/83	1985	1986, #4474-15
HE 20.3701/2:	507-C-04 (MF)	National Institutes of Health Annual Report of International Activities	1982	1/84	1985	1986, #4474-6

APPENDIX II
(Continued)

SuDoc	Item	Title	Last Issue Received	Date Received	Last Issue in *ASI*	*ASI*
HE 20.5301:	486-F-02 (MF)	Indian Health Care Improvement Act P.L. 94-437, Annual Report	1981	1/84	1984	1986, #4104-11
I 1.96/3:	603-F (MF)	Annual Report of Secretary of Interior Under Mining and Minerals Policy Act	1979	9/79	1985	1986, #5304-5[3]
I 1.100:	601-J (MF)	Report to Congress by the Secretary of Interior and the Secretary of Agriculture on Administration of the Wild Free-Roaming Horse and Burro Act	1982	n/a	1985	1986, #5724-8
I 29.59/4:	646-A-01	Archeological and Historical Data Recovery Program	1979	7/84	1983–1984	1986, #5544-10
I 70.18:	657-B-10 (MF)	Federal Recreation Fee Program	1980	6/81	1985	1986, #5544-14[4]
J 1.27/3:	717-N-03 (MF)	Report of the U.S. Department of Justice Pursuant to Section 8 of the Federal Coal Leasing Amendments Act of 1975	1982	7/83	1984	1986, #6004-12
J 26.25:	717-C-10 (MF)	Analysis and Evaluation, Federal Juvenile Delinquency Programs	1978	6/80	1987	1987, supp. 5[5] #6064-11
Ju 10.1:	728 (MF)	Annual Report (Administrative Office of U.S. Courts)	1980	11/80	1986	1987, supp. 5[6] #18204-2
L 35.1:	766-F-04 (MF)	Annual Report (Occupational Safety and Health Administration)	1982	7/84	1984	1986, #6604-2
L 38.13:	637-J-01 (MF)	Annual Report and Achievement Mine Safety and Health Administration	1980	9/83	1983	1986, #6664-6
OP 1.1:	834-W-04 (MF)	Annual Report (Overseas Private Investment Corporation)	1982	11/83	1986	1987, supp. 3, #9904-2
PM 1.42:	290-L-01 (MF)	Annual Report on Implementation of Federal Equal Opportunity Recruitment Programs, Report to Congress	1981	4/81	1984	1985, #9844-33
Pr 40.11:	848-E	Annual Report of the President on Trade Agreements Program	1981–1982	3/83	1984–1985	1986, #444-1

APPENDIX II
(Continued)

SuDoc	Item	Title	Last Issue Received	Date Received	Last Issue in *ASI*	*ASI*
TD 1.10/7:	982-C-23 (MF)	Annual Report by the President to Congress on Administration of Federal Railroad Safety Act of 1970	1980	3/82	1984	1986, #7604-12
TD 2.58:	982-G-34 (MF)	Highway Safety Stewardship Report	1982	1/83	1986	1986, #7554-26
TD 4.41:	431-C-24 (MF)	Annual Financial Report (Federal Aviation Administration)	1983	11/84	1986	1987, supp. 3, #7504-10
TD 8.26:	982-D-29 (MF)	Automotive Fuel Economy Programs, Annual Report to Congress	1982	1/84	1986	1987, supp. 2, #7764-9
Y 3.Ad 9/8:1	1049-D	Annual Report (Advisory Commission on Intergovernmental Relations)	1980	4/82	1986	1987, supp. 5, #10044-3
Y 3.Ap 4/2.1	1050-A	Annual Report (Appalachian Regional Commission)	1981	3/83	1984	1986, #9084-1
Y 3.B 27:1	1062-D-01	Annual Report (Architectural and Transportation Barriers Compliance Board)	1983	3/84	1986	1987, supp. 4, #17614-1
Y 3.C 43/2:1	1062-C-01	Annual Report (National Advisory Council on Child Nutrition)	1979	7/80	1984	1985, #14854-1
Y 3.F 31/8:1	1061-K (MF)	FDIC Annual Report	1981	1/83	1985	1986, #9294-1
Y 3.In [illegible]/25:1	1051-D-01	Annual Report (Inter-American Foundation)	None received		1986	1987, supp. 4 #14424-1
Y 3.J 27:1	1061-F-01	Annual Report (Japan-United States Friendship Commission)	1982	7/83	1985–1986	1987, supp. 2 #14694-1
Y 3.M 33/3:1	1064-C	Annual Report (Marine Mammal Commission)	None received		1985	1986, #14734-1

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[1] ASI reported discontinued with 1981 (1984 ASI) but listed 1984 & 1985 reports in 1986.

[2] Earlier issues were ASI #4434-8. The entry # for the 1986 edition changed due to a change in the issuing agency. No SuDoc was given for the new entry.

[3] No separate reports issued for 1980–1983 (1985 ASI).

[4] ASI gives I 29.108: as the SuDoc beginning with 1982. The 1982 report was received on deposit under this call number but it is not in the List of Classes.

[5] No reports issued for FY79 (1981 ASI) or FY81 (1984 ASI).

[6] This report is also included in Ju 10.1/2:

[redacted]

— Question 2. b)

FUGITIVE FEDERAL PUBLICATIONS, 1987-1988: A SELECTED LIST

DEPARTMENT OF AGRICULTURE

Timeless heritage: a history of the Forest Service in the Southwest. U.S. Forest Service, 1988. 208 p. OCLC #18619938

DEPARTMENT OF DEFENSE

Base realignments and closures: report of the Defense Secretary's Commission. U.S. Dept. of Defense, Commission on Base Realignment and Closure, 1988. 86 p. OCLC #18968635

The Infrared handbook. Rev. ed. U.S. Office of Naval Research, 1985. 1 v. (var.pag.). OCLC #13323799

* Investigation report: formal investigation into the circumstances surrounding the downing of Iran Air Flight 655 on 3 July 1988. U.S. Dept. of Defense, 1988. 53 p. OCLC #18396562

Report. Task Force on Women in the Military. U.S. Dept. of Defense, Task Force on Women in the Military, 1988. 23 l. OCLC #17486505

ENVIRONMENTAL PROTECTION AGENCY

Air quality benefits of alternative fuels. U.S. Environmental Protection Agency (prepared for the President's Task Force on Regulatory Reform, Alternative Fuels Working Group), 1987. 31 l. OCLC #18634224

Cost of clean air and water: report to Congress. 2d ed. U.S. Environmental Protection Agency, 1984. OCLC #6045831

Future concentrations of stratospheric chlorine and bromine. U.S. Environmental Protection Agency, 1988. 1 v. (var. pag.). OCLC #18722653

* Greenhouse effect, sea level rise and coastal wetlands. U.S. Environmental Protection Agency, 1988. 152 p. OCLC #13822214

DEPARTMENT OF HEALTH AND HUMAN SERVICES

* Annotated bibliography of literature on women who are homeless and mentally ill. U.S. National Institute of Mental Health, 1986. 7 p.

* Catastrophic illness expenses: report to the President. U.S. Dept. of Health and Human Services, 1986. 117 p. OCLC #14816933

Ethnographic perspectives on homeless and homeless mentally ill women: proceedings of a two-day workshop ... October 30-31, 1986. U.S. Alcohol, Drug Abuse, and Mental Health Administration, 1987. 77 l. OCLC #17529297

DEPARTMENT OF HEALTH AND HUMAN SERVICES (cont.)

The Homeless: background, analysis, and options. U.S. Dept. of Health and Human Services, Working Group on the Homeless, 1984. 25 p. OCLC #17610352

The Homeless with alcohol-related problems: proceedings of a meeting to provide research recommendations ... July 29-30, 1985. U.S. National Institute on Alcohol Abuse and Alcoholism, 1985. 50 p. OCLC #17779991

NIMH-funded research concerning homeless mentally ill persons: implications for policy and practice. U.S. National Institute of Mental Health, 1986. 41 p. OCLC #17529322

Report of federal efforts to respond to the shelter and basic living needs of chronically mentally ill individuals. U.S. Dept. of Health and Human Services and Dept. of Housing and Urban Development, 1983. 45 p. OCLC #18026677

Summary of federal programs available to help the homeless. U.S. Federal Task Force on the Homeless, 1987. 1 v. (var. pag.). OCLC #16265163

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

A Report to the Secretary on the homeless and emergency shelters. U.S. Dept. of Housing and Urban Development, 1984. 66 p. OCLC #10728810

DEPARTMENT OF JUSTICE

Alien terrorists and undesirables: a contingency plan. U.S. Immigration and Naturalization Service, 1986.

SICs as delineators of economic markets. U.S. Dept. of Justice, Antitrust Division, 1986. 38 p. OCLC #14984669

NATIONAL SCIENCE FOUNDATION

Educating Americans for the 21st century: a plan of action for improving mathematics, science, and technology education for all American elementary and secondary students so that their achievement is the best in the world by 1995: a report to the American people and the National Science Board. National Science Board Commission on Precollege Education in Mathematics, Science, and Technology, 1983. 124 p. OCLC #11677422 (This is the main report: source materials were distributed to depository libraries in microfiche under NS 1.2:Ed 8/21)

THE PRESIDENT

Coping with the dynamics of world trade in the 1980's: a report to the President from the President' Export Council, v.1. U.S. President's Export Council, 1984. OCLC #11891681 (This is the main report: an appendix was distributed to depository libraries under Pr 40.8:Ex 7/W 89/v.2)

THE PRESIDENT (cont.)

Report of the President's Task Force on Food Assistance. U.S. President's Task Force on Food Assistance, 1984. 297 p. OCLC #11203522

The President's Task Force on International Private Enterprise: report to the President. U.S. President's Task Force on International Enterprise, 1984. 172 p. OCLC #11509624

The President's Task Force on International Private Enterprise: selected papers. U.S. President's Task Force on International Private Enterprise, 1984. 236 p. OCLC # 15533630

The Private enterprise guidebook. U.S. President's Task Force on International Private Enterprise, 1984. 96 p. OCLC #13007207

A Survey of the Reagan Administration accomplishments on behalf of women. U.S. President's Task Force on Legal Equity for Women, 1984. 61 l. OCLC #14912078

High road to economic justice: U.S. encouragement of employee stock ownership plans in Central America and the Caribbean: report to the President and Congress. U.S. Presidential Task Force on Project Economic Justice, 1986. 109 p. OCLC #15227193

Reagan administration achievements in regulatory relief: a progress report. U.S. Presidential Task Force on Regulatory Relief, 1982. 37 p. OCLC #10960856

Reagan administration achievements in regulatory relief for state and local government: a progress report. U.S. Presidential Task Force on Regulatory Relief, 1982. 23 p. OCLC #9172743

Reagan administration regulatory achievements. U.S. Presidential Task Force on Regulatory Relief, 1983. 124 p. OCLC #9979675

DEPARTMENT OF TRANSPORTATION

Report of the Safety Review Task Force on domestic aviation security regarding passenger and carry-on baggage screening. U.S. Dept. of Transportation, 1987. 16 l.

NATIONAL ENDOWMENT FOR PEACE

Annual report. 1st- 1983/84- OCLC #15127941

Cynthia Bower
UA Library
3/89

SOLD BUT NOT DEPOSITED: SOME RECENT EXAMPLES

	SuDoc No.	Title	Date	MF
*	[A 1.11/3:CT]	Resource guide to educational materials about agriculture: a project of Agriculture in the Classroom. 1988. 76 p.	10-21-88	N
	A 1.107:559	Economic importance of cotton insects and mites on United States agriculture. 1988. 36 p.	10-19-88	Y/M
*	A 93.41:69	Rural economic development in the 1980's: prospects for the future. 1988. 413 p.	10-5-88	Y
	[C 3.2:CT]	Test census, 1987, general population and housing statistics: north central North Dakota. 1988. 463 p.	8-24-88	N
	C 3.150:B/988	Schedule B: statistical classification of domestic and foreign commodities exported from the United States. 1987- (looseleaf)	9-14-87	Y
	C 3.164:155/987/v.1	United States general imports, world area and country of origin by Schedule A commodity groupings, 1987, v.1. 1988. 286 p.	10-25-88	Y
	C 3.186/20-2:986-87	County population estimates: July 1, 1987 and 1986. 1988. 28 p.	10-25-88	N
	C 3.205/3:WP-87	World population profile: 1987. 1988. 80 p.	5-16-88	N
	C 3.212:58	Estimates of poverty including the value of noncash benefits: 1987. 1988. 71 p.	10-12-88	Y/M
*	C 13.10:500-157	Smart card technology: new methods for computer access control. 1988. 50 p.	10-12-88	Y
	C 13.10:752	Laser induced damage in optical materials: 1986. 1988. 723 p.	10-12-88	Y
	C 13.46:1250	NBS Real-Time Control System user's reference manual. 1988. 392 p. (looseleaf)	10-24-88	Y
	[C 61.2:CT]	Competitive assessment of the United States electric motor industry. 1988. 81 p.	10-7-88	N

	D 1.2:St 8/2	Soviet strategic defense programs. 1985. 27 p.	OP	N
	D 1.79/4: 001-87/ver.2	Guide to understanding audit in trusted systems, 1988. 1988. 31 p.	10-13-88	N
	D 1.79/4: 006/ver.1	Guide to understanding configuration management in trusted systems. 1988. 39 p.	10-11-88	N
	[D 5.402:CT]	The Air campaign: planning for combat. 1988. 224 p.	9-22-88	N
	[D 103.2:CT]	Army engineers and the development of Oregon: a history of the Portland District, United States Army Corps of Engineers. 1988. 271 p.	10-19-88	N
	D 110.9:14	Dragon operations: hostage rescues in the Congo, 1964-1965. 1988. 236 p.	10-20-88	Y/M
	D 114.2:R 22	Defense policy in the Reagan administration. 1988. 451 p.	10-19-88	N
*	[D 301.82/6:CT]	Harnessing the genie: science and technology forecasting for the Air Force, 1944-1986. 1988. 223 p.	10-12-88	N
	D 301.78:982	The Home front and war in the 20th century: the American experience in comparative perspective. 1984. 301 p.	OP	N
*	[E 1.]	Energy design principles in buildings: passive and hybrid solar low energy buildings. 1988. 68 p. (Design information booklet 1)	10-24-88	?
	E 3.46/5:987	Uranium industry annual, 1987. 1988. 153 p.	10-14-88	Y/M
*	[ED 1.102:CT]	Youth indicators, 1988: trends in the well-being of American youth. 1988. 141 p.	9-22-88	N
*	[ED 1.102:CT]	Key statistics on public elementary and secondary education reported by state and geographic region, 1986-87. 1988. 63 p.	10-24-88	N

	EP 1.2:As 1/2	Asbestos waste management guidance: generation, transport, disposal. 1985. 32 p.	OP	N
	EP 4.9:42/985/ v.1/supp.B	Compilation of air pollutant emission factors, v.1: Stationary point and area sources, supplement B. 1988. 185 p. (looseleaf)	10-19-88	N
	[HE 3.2: F 11/988]	Fast facts and figures about social security, 1988. 1988. 41 p.	10-11-88	N
*	HE 20.2:N 95/2	Surgeon General's report on nutrition and health. 1988. 765 p.	10-28-88	N
	HE 20.2:N 95/2/ sum.	Surgeon General's report on nutrition and health: summary and recommendations. 1988. 92 p.	9-6-88	N
	[HE 20.8202: Su 7/985]	National household survey on drug abuse: main findings, 1985. 1988. 214 p.	10-4-88	N
	HE 22.8/16:988	Medicare handbook, 1988. 1988. 39 p.	5-4-88	N
*	HE 22.8/16:989	Medicare handbook, 1989. 1989. 44 p.	12-28-88	N
	I 28.27:9187	Phosphate availability and supply: a mineral availability appraisal. 1988. 76 p.	10-11-88	Y
	NAS 1.1/4:988	Spinoff, 1988. 1988. 148 p.	11-22-88	Y/M
	NAS 1.26:496	Atlas of galaxies useful for measuring the cosmological distance scale. 1988. 116 p.	7-15-88	N
*	S 1.1:952-54/ v.8	Foreign relations of the United States, 1952-1954, v.8: Eastern Europe, Soviet Union, Eastern Mediterranean. 1988. 1493 p.	10-31-88	Y/M
*	[S 1.114/3:CT]	The Future of conventional arms control in Europe. 1988. 75 p.	10-28-88	N
	[S 1.114/3:CT]	Postwar Indochina: old enemies and new allies. 1988. 310 p.	8-1-88	N
	TD 2.23:986	Highway statistics, 1986. 1987. 198 p.	1-12-88	N
*	TD 2.23:987	Highway statistics, 1987. 1988. 192 p.	10-24-88	N

TD 7.11/2:986	National urban mass transportation statistics: 1986 Section 15 annual report. 1988. 645 p.	10-28-88	Y
* Y 3.D 84/2:D 84	Toward a drug-free America: the national drug strategy and implementation plans. 1988. 59 p.	8-18-88	N
* Y 3.H 19:8 In2	Toward independence: an assessment of federal laws and programs affecting persons with disabilities, with legislative recommendations. 1986. 83 p.	4-17-86	N
Y 3.H 19:8 In2/App.	Toward independence: an assessment of federal laws and programs affecting persons with disabilities, with legislative recommendations. Appendix: Topic papers. 1986. 495 p.	8-21-86	N
[Y 3.T 22/2:]	Artificial insemination: practice in the United States, summary of a 1987 survey. 1988. 120 p.	9-1-88	N

Cynthia Bower
UA Library
3/89

[redacted]

Question 2. c)

AN-v10-#12-6/15/89

RECOMMENDATIONS

DEPOSITORY LIBRARY COUNCIL MEETING

PITTSBURGH, PA

MARCH 10, 1989

COMMENDATION 1: The Depository Library Council thanks Stephen Hayes of the University of Notre Dame and his staff for preparing a usable list of documents in the microfiche backlog of February to August 1987, using the GPO print order data. This project has been a valuable service to the depository library community.

COMMENDATION 2: The Depository Library Council commends Cynthia Bower of the University of Arizona for her thorough research and analysis of the problem of fugitive government publications. Her efforts have helped to illuminate a complex problem affecting public access to government information.

COMMENDATION 3: The Depository Library Council commends the efforts of Dave Brown in the quietly effective and efficient arrangement of accommodations and amenities for the members of the Depository Library Council and the Council meeting in general.

COMMENDATION 4: The Depository library Council commends the Library Programs Service Depository Administration Branch for implementing a new microcomputer-based system to generate shipping lists for depository libraries and for agreeing to distribute this database to the depository community in machine readable format (Administrative Notes, Vol. 10, No. 4, February 1989, p. 7). This will be of great benefit to depository libraries that are automating processing and bibliographic record control.

COMMENDATION 5: The Depository Library Council commends **the Joint Committee on Printing for its selection of and** the Government Printing Office for its use of alkaline paper in ~~its~~ **the** recent publication: Biographical Directory of the U.S. Congress. We urge GPO to assume a leadership role in promoting the use of permanent paper in government publications and set an example for other publishing entities.

RECOMMENDATION 1: The Depository Library Council recommends that a regular column appear in Administrative Notes to provide depository libraries with timely notification of developments in electronic media so that they have adequate time and sufficient information to prepare for receipt and use of such products.

RATIONALE: Depository libraries need information on GPO plans and projections for electronic publication in order to plan and budget for the effective use of these materials in their libraries.

RECOMMENDATION 2: The Depository Library Council recommends that GPO improve the distribution of aeronautical and nautical charts produced by NOAA and NOS. In the interest of public safety we encourage that these materials be delivered to depository libraries in a timely and efficient manner and that additional authorization be requested to accomplish this. Similarly, we urge that every effort be devoted to lessen the current backlog of nautical charts and that they be shipped to depository libraries via first class mail.

RATIONALE: Current maps and charts are vitally important for navigational purposes. Since these specific maps and charts are revised often, it is imperative that pilots and sailors have available the most current editions for the safety of all citizens.

RECOMMENDATION 3: The Depository Library Council recommends that Library Programs Service survey the depository library community at the earliest possible date for their selection of CD-ROM **and other electronic** products (~~i.e.,~~ **for example** Census).

RATIONALE: In view of the report presented at this Council meeting concerning the imminent distribution of data from the 1987 Economic Census by the Census Bureau, libraries should be apprised of the content of the products in the new formats and the status of existing item numbers.

RECOMMENDATION 4: The Depository Library Council recommends that all publications available through the GPO Sales Program be included in the Depository Library Program.

RATIONALE: If a publication has enough public value to make it marketable, it meets the criteria for depository library distribution as a title of public interest. Furthermore, placement in the Sales Program increases the visibility and frequency of requests for the publication.

RECOMMENDATION 5: The Depository Library Council recommends that statistical summaries from the April 1989 Biennial Survey of Depository Libraries be shared with Council. Council is specifically interested in the responses to Question No. 23 (number of claims to GPO in a month). We urge that this data be divided and presented as summaries for each state.

RATIONALE: While the number of claims to GPO has been reduced in the last several years, Council believes it may still be a problem in certain regions. This data would allow Council and GPO to review this issue and provide much useful statistical information.

RECOMMENDATION 6: The Depository Library Council recommends that Library Programs Service review the procedure for assigning item numbers for Presidential Commissions~~, particularly Item No. 851-J-4,~~ **and assign a single item number for them.**

RATIONALE: Many libraries did not receive the Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic (Pr 40.8:H 88/R 29), which was sent on Shipping List 88-436-P, because they had not selected Item No. 851-J-4. That item number was surveyed under the title "Advisory Board for Radio Broadcasting to Cuba." The HIV Epidemic Commission report was added to Item No. 851-J-4 as of the shipping list on which it was distributed. Assuming that reports of other Presidential Commissions may be added to this item number or other item numbers in the future, depository librarians need clarification so they can make informed selections.

RECOMMENDATION 7: The Depository Library Council requests that GPO send a staff member as a consultant to a meeting to be arranged by the Depository Library Council which will be held at the American Library Association Annual Meeting in Dallas. The purpose of the meeting is to begin a dialog among the users of the GPO cataloging tapes and other bibliographic products regarding the needs of the tape users.

RATIONALE: Many libraries are developing local online public access catalogs (OPACs) and these libraries want to include their government publications. The GPO tapes **are** generated to produce the Monthly Catalog~~,~~. **The Monthly Catalog** ~~which~~ is viewed as an availability record~~,~~. **The tapes** contains multiple records for issues of serials and parts of sets. This makes these tapes unusable for an OPAC without a large amount of personnel resources. We believe that discussions among knowledgeable representatives of the stakeholders can **result in agreement** on recommendations which will meet the needs of all parties. Such a meeting needs a consultant from GPO who is well informed about the policies and procedures of GPO in producing its cataloging tapes.

RECOMMENDATION 8: The Depository Library Council requests that Library Programs Service arrange for a progress report on the development of the Acquisition, Classification and Shipment Information System (ACSIS) to be presented at the Fall 1989 Council Meeting. Council further requests that a higher priority be placed on ACSIS within GPO and that milestones for its development be established and made known.

RATIONALE: It appears that no milestones have been set for the development of ACSIS and that the project has not been scheduled. ACSIS holds the promise of resolving an increasing number of difficulties experienced by both GPO and the depository libraries; therefore, Council and the depository community have a vital interest in its development.

RECOMMENDATION 9: The Depository Library Council recommends that the Public Printer request authorization from the Joint Committee on Printing to convert volumes 129 to 131 of the final edition of the Congressional Record to microfiche. These volumes are currently authorized for production in paper only, and this decision, if followed, will **deny leave** those 850 depository libraries requesting the microfiche version with no final edition. Council further recommends that GPO maintain dual format (paper and microfiche) until such a time as a CD-ROM version of the bound Congressional Record has been tested and proven effective. ~~At a minimum, those selecting microfiche should be resurveyed.~~

RATIONALE: It was never Council's intent that the microfiche format be eliminated (See Recommendation #10, Spring 1988, that requested the restoration of dual format for the final edition Congressional Record).

RECOMMENDATION 10: The Depository Library Council recommends that the Public Printer notify those agencies that have been granted exemptions from 44 U.S.C. 501 (i.e., Territorial Sea Commission, National Ocean Policy Commission, Commission on the Bicentennial of the U.S. Constitution, and the National Institutes of Health, and other agencies) that these agencies are still responsible for provision of copies of their publications in sufficient quantities to meet the needs of the depository community.

RATIONALE: These publications are of critical importance to the users of the depository system and the agencies may require further education concerning their obligations and responsibilities to meet the statutory provisions of Title 44 relating to distribution of agency material to depository libraries.

RECOMMENDATION 11: The Depository Library Council recommends that the Joint Committee on Printing and the Government Printing Office consult with the Council and other interested stakeholders in the development of guidelines for the establishment and evaluation of electronic pilot projects for depository libraries. These guidelines should then be given the opportunity for wide public debate.

WHAT EVER HAPPENED TO . . . ? ? ?

AN-v10-[illegible]

1989-06

DATE April 28,19

PAGE 1 OF 2

CLASS NO.	ITEM NO.	STATUS
A 93.44:AGES 870724	0042-W-01	Rural Economic Development in the 1980's - Preparing for the Future (MF) Copy received from the Agency and will be distributed in the near future.
AC 1.17:988/5	0025-A-10	Arms Control Update The April 1988, number 5, edition of this publication will not be sent to depository libraries. The Arms Control and Disarmament Agency cannot furnish copies.
ED 1.302:L 61/v. 2,v.3	0461-D-05	Rethinking the Library in the Information Age Volumes 2 and 3, of this publication has been sent for reprinting and volume 1 has been ordered from the Agency and will be sent for reprinting as soon as it's received by LPS. All three volumes will be sent to depository libraries in the near future.
I 19.42/4:88-4038 I 19.42/4:87-4105	0624 0624	Water Resources Investigation Reports 87-4105 and 88-4038 These two reports will be sent in microfiche because LPS was unable to obtain paper copies from United States Geological Survey.
I 49.40/2:	0614-A	Fisheries Review and the Fisheries Review Data Base These publications were not in the budget for the Department of Interior presented by President Bush for Fiscal Year 1990. Therefore, the September 1989 issue is currently projected as the last issue to be printed. To meet your current awareness and other literature reference needs, we suggest you and /or your organization seek alternative indexing/abstracting services.
Ju 10.23:	0729-F	News and Views The Administrative Office of U. S. Courts, informed LPS the this publication is for Administrative use only, and will not be sent to depository libraries.

AN-v10-#12-6/15/89

Update to the
LIST OF CLASSES

1989-10

DATE April 28,1989

PAGE 1 **OF** 1

CLASS NUMBER	ITEM NUMBER	CHANGE/NOTICE
A 57.46/11:	0102-B-12	Change title from Water Supply Outlook and Federal-State-Private Cooperative Snow Surveys for Idaho (monthly) (MF) to Idaho Water Supply Outlook and Federal-State-Private Cooperative Snow Surveys (monthly) (MF).
E 3.11/7-3:	0435-E-02	Information contained in Energy Data Report: Coal-Pennsylvania Anthracite (annual) (P), E 3.11/3-2:, will now be contained in the title Coal Production (MF) (annual), E 3.11/7-3, item number 0435-E-02.
SE 1.20:	0908-A	SEC Monthly Statistical Review (P) has been discontinued effective with Volume 48, No. 2, Febr[illegible]y 1989.
Y 3.N 88:48/	1051-H-36	Change frequency from quarterly to semiannual.
Y 4.G 74/7-10:	1016-A (P) 1016-B (MF)	Rules of the Committee on Government Operations will be added to item numbers 1016-A (P) and 1016-B (MF).

WHAT EVER HAPPENED TO . . . ? ? ?

AN-v10-[illegible]

1989-06

DATE April 28, 1989

PAGE 2 OF 2

CLASS NO.	ITEM NO.	STATUS
LC 1.32/5:	0785-E-01	FedLinks Volume 6, numbers 10, 11, and 12; and volume 7, number 3, will not be sent to depository libraries. The Library of Congress will not furnish copies prior to May 1989. Starting with the May 1989 and subsequent issues will be furnished.

[illegible]

Question 2. c)

AN-v10-#4-2/89

Responses To Recommendations From Depository Library Council Fall 1988 Meeting

1. **RECOMMENDATION:** The Depository Library Council requests that the Public Printer convey to the Archivist of the United States our appreciation for inclusion of the GPO printed archives in its new Center for Legislative Archives. We also urge the Public Printer to encourage the National Archives to continue its efforts, such as the recent arrangement of the collection by SuDoc number, to make the collection more visible and accessible to depository libraries and the general public.

RESPONSE: The Acting Public has sent the following letter to the Archivist of the United States:

Mr. Don W. Wilson
Archivist
National Archives and Records
 Administration
7th & Pennsylvania Avenue NW.
Washington, DC 20408

Dear Mr. Wilson:

At the request of the Depository Library Council to the Public Printer, I am writing to convey its appreciation of the National Archives and Records Administration's (NARA) efforts toward improved access to Government documents. The enclosed Recommendation from the October 1988 meeting of the Council expresses the importance of NARA's activities to the community of documents librarians.

Please accept my gratitude as well. GPO shares with NARA a common goal of making Government information products accessible to the American public, and the inclusion of the GPO documents library in the Center for Legislative Archives will certainly provide better public access to that collection than ever before.

Sincerely,

JOSEPH E. JENIFER
Acting Public Printer

2. **RECOMMENDATION:** The Depository Library Council recommends that GPO Marketing develop depository library promotional posters for use in non-depository libraries. These posters would direct users to the nearest depository for their government information needs.

   RATIONALE: This would help to increase public awareness of the Federal Depository Library Program by encouraging referrals to depositories from non-depositories. A blank space for identification of the nearest depository would allow for the customization of the poster by the recipient library.

   RESPONSE: The Office of Marketing will be developing posters which promote the use of government documents for display in both depository and non-depository libraries. Provision is being made for those posters displayed in non-depository libraries to direct people to depositories. The library community has been solicited for suggestions through a notice which appeared in DTTP, V. 16, No. 4 (Dec. 1988) as well as through a notice in the February 1989 issue of Administrative Notes (Vol. 10, No. 4).

3. **RECOMMENDATION:** The Depository Library Council requests that Library Programs Service arrange for a report on the status of the development of the Acquisition, Classification and Shipment Information System (ACSIS) to be presented at the Spring 1989 Council Meeting. Council further requests that milestones past and future be specified and that a timetable for achievement of future milestones be provided. If units other than Library Programs Service are, or will be, involved in future stages of development, representatives of those units should be asked to comment on the aspects of system development in which they will be involved.

   RATIONALE: ACSIS holds the promise of resolving a number of difficulties experienced by both GPO and the depository libraries which are serials control, flexibility of item selection, acquisition of fugitive documents, etc. Council and the depository community have a vital interest in its development.

   RESPONSE: Library Programs Service has conveyed Council's request to the Office of Information Resources Management. They have arranged for John Beaton, Chief, Library and Support Systems Branch, to report on the status of the ACSIS System. Mr. Beaton's presentation is scheduled for Wednesday, March 8, from 11:15-11:45 a.m.

4. **RECOMMENDATION:** The Depository Library Council urges the Library Programs Service Information Technology Program to identify electronic products produced by Federal agencies, and to actively solicit these products for depository distribution.

RATIONALE: Federal agencies are producing electronic products with increasing frequency. In order for depositories to fulfill their role as a key channel for public access to federal information, they will need access to these electronic products.

RESPONSE: When a Federal agency produces an electronic information product through the Government Printing Office, the Library Programs Service evaluates the suitability of that product for depository distribution. This was the case with Census Test Disk #2, which was the first such product distributed to depositories.

In January 1989, the Acting Public Printer established an Electronic Dissemination Task Force within the GPO. This Task Force was formed to centralize research, planning, liaison work, and intra-agency coordination of activities relative to the electronic dissemination of information. Bonnie Trivizas will appear before the Spring 1989 Council meeting to explain more about the Task Force and its activities.

5. **RECOMMENDATION:** The Depository Library Council requests that the Public Printer make available the final report of The Academic and Public Depository Library User Study to the Depository Library Council by January 30, 1989. Council further recommends that a succinct summary be prepared for inclusion in the February issue of Administrative Notes and that copies of the full report be made available to the entire depository community upon its publication.

RATIONALE: The Council needs adequate time to study the final report in order to make informed comments at the March Depository Library Council Meeting. The summary will preview the published report and provide the depository community with timely information until such time as the full report is distributed.

RESPONSE: As noted in the Vol. 10, No. 1 (January 1989) issue of Administrative Notes, the delivery date of the contractor's final report has been extended until February 15, 1989. LPS will distribute copies of the final report to Council members upon completion of GPO's internal review and approval process. Additionally, LPS will publish a summary of the report in Administrative Notes, as well as print and distribute paper copies of the full report to all depository libraries. Due to the delayed delivery of the final report, the time frame which Council has specified will not be met.

6. **RECOMMENDATION:** The Depository Library Council requests that GPO investigate the status of reports missing from the Depository Library system, such as those listed in the appendices of the Sears and Lewis article ("Currency of Selected U.S. Federal Government Agency Annual Reports Received by Depository Libraries," Government Publications Review, Vol. 15, pp. 323-341, 1988) and report their findings in Administrative Notes as a first step in resolving this type of problem.

   RATIONALE: This study shows that many annual reports that are in the List of Classes are currently published, but not received by GPO for distribution; other reports were found to be discontinued, while still others were shown not to be current. The List of Classes is an important administrative and reference tool and should reflect more accurately what is being sent to depository libraries.

   RESPONSE: The Acquisitions Section of LPS routinely follows up on all publications identified as not being distributed through the Depository Library Program. LPS becomes aware of missing publications through a variety of sources, including our own internal systems, communications from individual depository libraries, and published literature such as the Sears and Lewis article cited by Council. The results of research conducted by Acquisitions are reflected in the "Whatever Happened to..." column of Administrative Notes, as well as with weekly updates to the List of Classes, and the List of Classes itself.

7. **RECOMMENDATION (SUBSTITUTE):** The Depository Library Council recommends that the Library Programs Service distribute braille publications under the same item numbers as the non-braille edition of the same title.

   RATIONALE: Needs of selective depositories vary. By providing for advance selection of braille publications, costs of printing and distribution of unwanted publications may be avoided.

   RESPONSE: As announced in the Vol. 9, No. 20 issue of Administrative Notes, Library Programs Service has begun distribution of the braille edition of publications under the same item number as the non-braille edition of the same title.

8. **RECOMMENDATION:** The Depository Library Council recommends that the Library Programs Service explore the development of a cooperative system with the Sales Program and other appropriate GPO offices to identify significant titles for which paper copies should be shipped directly to all depositories, whether or not they were selected by the library.

RATIONALE: Several times in the past year, GPO has distributed paper copies of significant publications to all depository libraries, regardless of whether or not the library had selected that classification or format in the previous Annual Item Selection Update Cycle. This is a commendable service to the libraries and their users and GPO should establish a mechanism to ensure that future publications of similar significance are identified in time to receive similar treatment.

RESPONSE: GPO is in the process of examining the feasibility of setting up a mechanism to identify significant titles for which paper copies should be shipped to all depositories, whether or not they were selected by the library. As part of this assessment, GPO issued the following memorandum to the Depository Library Council:

December 20, 1988

Director, Library Programs Service

Request for Advice of Council on Establishing Criteria for Identification of "Significant titles for which paper copies should be shipped directly to all depositories"

Depository Library Council to the Public Printer

Preliminary analysis indicates that the "cooperative system" proposed in Depository Library Council Recommendation #8 (October 1988) may be operationally feasible for GPO to implement subject to any budgeting limitations. Key to the effectiveness of such a system, however, is the establishment of definitive criteria to guide GPO's selection of "significant titles for which paper copies should be shipped directly to all depositories..." Given the diversity of interests represented among depository librarians and their communities, there could exist wide variance in judgment as to what constitutes a significant title.

Council is requested, therefore, to provide a set of definitive selection criteria with examples of significant titles to be used by GPO in conjunction with our analysis of the feasibility of implementing Recommendation #8. LPS would like to receive the criteria no later than February 1, 1989.

MARK SCULLY

Upon receiving a set of definitive selection criteria from Council, GPO will assess whether or not the criteria constitute an adequate operational definition to be used by GPO personnel for consistently identifying such titles at the pre-printing stage, so that sufficient paper copies can be ordered for full paper distribution.

9. **RECOMMENDATION:** The Depository Library Council acknowledges the hard work of the Library Programs Service Acquisitions Unit and commends the staff for their ongoing efforts to acquire publications. Due to the immensity of their responsibilities, the Depository Library Council recommends that professional librarians be added to the staff of the Library Programs Service Acquisitions Unit in order to provide staff which can effectively monitor and encourage the Executive agencies to provide copies of their publications for depository distribution.

RATIONALE: The increasing incidence of unavailable documents, the small professional staff in the Acquisition Unit, the apparent inability to establish an effective program to acquire fugitive publications, and the lack of success at acquisition of various subsets of Federal government publications, when compared with commercial efforts, all lead to the conclusion that the depository program is a victim of inadequate staffing in the Acquisitions Unit.

RESPONSE: The Library Programs Service shares Council's desire that Executive agencies comply fully with the law by providing their publications to GPO for depository distribution. In an effort to improve compliance, LPS officials consulted with the Office of Management and Budget during the formulation of OMB Circular A-130, entitled "Management of Federal Information Resources," to include a provision that would serve to monitor agencies in this regard and encourage them to comply with the law. Thus, OMB Circular A-130 states,"...agencies must establish procedures to ensure compliance with 44 U.S.C. 1902, which requires that government publications (defined in 44 U.S.C. 1901 and repeated in Section 6k of the Circular) be made available to the Federal depository libraries through the Government Printing Office." This effort of the OMB to establish an effective compliance program for their Executive agencies is appreciated and LPS stands ready to assist agencies in fulfilling their responsibilities under 44 U.S.C. 1902 and OMB Circular A-130.

Council should be heartened to learn that LPS has planned and is about to implement a reorganization within Library Division, which will group like-functions (such as document acquisitions and classification), simplify work procedures, and improve operational efficiency overall. This reorganization reflects LPS' intent to make optimal use of the fixed number of FTE (full-time equivalent) staff positions that is allowed by Congress. Under the Federal personnel system, the authority to reclassify any LPS positions into the GG-1410 "professional librarian" series is reserved to the GPO Personnel Service.

10. **RECOMMENDATION:** The Depository Library Council recommends that the Library Programs Service encourage their Acquisitions Unit to develop alternative methods for acquiring depository publications when agencies fail to respond positively to routine inquiries.

RATIONALE: GPO's "What Ever Happened To..." column has cited a number of titles which agencies have been unable to supply (*Administrative Notes*, Vol. 9, No. 14, p. 8, August 1988). These are titles which have already been established as depository items. Selecting libraries are entitled to receive the publications which match their selection profiles, and failure to supply these publications impairs service to the public. The Acquisitions Unit should develop alternative mechanisms for obtaining fugitive publications such as photocopies, commercial microfiche copies, etc.

RESPONSE: Publication Request forms (see attached) are sent to agencies (with copies to the Joint Committee on Printing) to try and obtain adequate distribution stock of documents not printed through GPO.

In cases where the agency cannot supply the requisite quantity of paper copies, LPS routinely attempts to get two paper copies to evaluate the suitability of the title for distribution in microfiche. If the physical format is conducive to fiche, we convert the title and distribute it to depository libraries in microfiche.

GPO is not authorized to use appropriated funds to go back to press for agency produced publications, nor are we authorized to use appropriated funds to procure commercial microfiche copies of agency-produced publications. The originating agency must bear the cost of providing the requisite number of copies for depository distribution.

PUBLICATION REQUEST

[illegible]

TO

DATE
FROM U.S. Government Printing Office
Library Programs Service (SLLA)
Depository Administration Branch
Washington, D.C. 20401

(Form may be returned to the above address.)

1. Under provisions of the United States Code, Title 44, Chapter 19 (Depository Library Program), the Superintendent of Documents distributes U.S. Government publications to officially designated depository libraries in the United States and its possessions. 44 U.S.C. Sections 1901-1903 and OMB Circular A-130 section 8.a(12)(b) require Government agencies to furnish copies of Government publications obtained elsewhere than from the Government Printing Office to the Superintendent of Documents for distibution to depository libraries.

   Our records indicate that the following publication(s) was produced by your agency and has not been distributed to the depository libraries:

   We request that you forward________copies of this and future issues to:

   U.S. Government Printing Office
   Depository Receiving Section
   Jackson Alley, Rm A-150
   Washington, D.C. 20401

   Since the number of copies needed changes from time to time, if the next issue is not printed within 30 days, please contact the Acquisitions Unit on 202/275-1070 for a current quantity. Please contact this Office for quantity information as other material is issued by your Office.

2. On occasion, the publication that we are trying to acquire may have been printed through GPO. If this is the case, the copies are not required from your Office; however, we request provision of the GPO Jacket, requisition, program and print order numbers below, when available. For more information, please call 202/275-1071.

   GPO Jacket #_______ Program #_______ Print Order #_______ Requisition #_______

3. IF THE ABOVE PUBLICATION SHOULD NOT BE DISTRIBUTED TO THE DEPOSITORY LIBRARIES DUE TO AN EXCEPTION UNDER 44 U.S.C., PLEASE CHECK THE APPROPRIATE BOX BELOW.

   ☐ "[O]ffical use only or for strictly administrative or operational purposes which have no public interest or educational value" 44 U.S.C. § 1902. No copies are available to the public.

   ☐ "[C]lassified for reasons of national security" 44 U.S.C. § 1902. Should not be listed in the Monthly Catalog.

   ☐ "[C]ooperative publication which must necessarily be sold in order to be self-sustaining." 44 U.S.C. § 1903.

   ☐ Not a U.S. Government publication as defined by 44 U.S.C. § 1901.

4. IN ADDITION TO ASSURE THE CORRECT LISTING OF THIS PUBLICATION IN THE MONTHLY CATALOG OF THE UNITED STATES GOVERNMENT PUBLICATIONS, PLEASE COMPLETE THE FOLLOWING.

   ☐ Publication is available for sale by ______________________ Price________

   ☐ Publication is free to the public upon request.

   Frequency of issue is (circle) monthly, annual, irregularly, one-time, other _______

______________________________________ __________
(Signature of Respondent) (Date)

GPO form 3526
(R 1-86)

ADDRESSEE

BEST COPY AVAILABLE

12. **RECOMMENDATION:** The Depository Library Council recommends that GPO explore alternative ways of distributing titles designated for microfiche distribution when those titles are not suitable for conversion to conventional microfiche, i.e., oversize publications, publications containing maps, color, etc. 13

RATIONALE: There have been several notices in recent issues of Administrative Notes that indicate such titles will not be distributed at all since they cannot be microfiched. This appears to be a major shift in GPO procedure since similar situations in the past have resulted in paper distribution for the title in question.

RESPONSE: GPO routinely attempts paper distribution when the format of documents designated for microfiche distribution prohibits their being fiched.

When a significant number of publications associated with a single item number cannot be microfiched, LPS will change the item format from microfiche to paper.
When the bulk of publications associated with a single item number are fichable, occasionally LPS will receive individual documents that cannot be fiched. In these cases, the decision-making process is as follows: 14

When the document is printed through GPO,
if it is a Sales item,
LPS will request copies from Sales;
if Sales cannot supply, or if document is not a sales item,
LPS will reprint.
When the document is not printed through GPO, LPS will request paper copies from the agency;
if the agency supplies paper copies,
LPS will distribute;
if the agency does not supply paper copies,
LPS cannot distribute, since there is no authority for LPS to reprint publications unless they were initially printed through GPO.

Thus, it is likely that the "several notices in recent issues of Administrative Notes that identify titles which will not be distributed because they cannot be microfiched" do not indicate a major change in GPO policy; rather, they are instances in which the publication is not printed through GPO. The "similar situations in the past" which have resulted in paper distribution are undoubtedly documents that were printed through GPO.

13. **RECOMMENDATION:** The Depository Library council requests that Library Programs Service explore and develop ways to ensure that those distribution policies that apply to regional libraries also apply to shared regionals.

RATIONALE: Regional libraries receive all the titles which are shipped. Shared regionals are treated in the same manner as selective depositories, and receive "rain checks" instead of documents when Library Programs Service has insufficient quantities for distribution. Furthermore, some items are shipped only to regionals. Complete distribution would ensure the availability of these items within states that are served by shared regionals and would encourage new systems to accommodate the provisions of regional service within states where no regional library currently exists.

RESPONSE: The current configuration of the Lighted Bin System recognizes shared regionals as selective libraries. LPS is investigating the feasibility of reconfiguring the system to uniquely identify shared regionals so that they do not receive rainchecks, and that publications, which are only sent to regionals, would be sent to each library of the shared regional if there is sufficient quantity.

14. **RECOMMENDATION:** The Depository Library Council recommends to the Public Printer that funds be made available to send Library Programs Service staff members to meetings of major library associations, such as the ALA and AALL, both to represent the GPO within the Library community and to further the professional development of Library Programs Service personnel.

RATIONALE: Due to an unfortunate budgetary situation, attendance of Library Programs Service personnel at annual library association meetings in the summer of 1988 was curtailed. No representative was able to attend the AALL meeting and fewer attended the ALA Annual Meeting than in past years. Council feels this was a disadvantage to the library community and to Library Programs Service, and the Depository Library Council hopes that this will not recur.

RESPONSE: The Acting Public Printer is pleased with Council's acknowledgement of the value of GPO representation at major library association meetings. GPO will continue to place a high priority on staff attendance at these meetings, within the Congressionally-mandated limits of our travel budget. The events of the summer of 1988, which curtailed GPO participation in professional meetings, were unfortunate. However, no organization in GPO is immune to fiscal constraints. While we all hope such a situation will not recur, we must recognize that future policy developments and budgetary limitations could impose new restrictions at any time.

15. **RECOMMENDATION:** The Depository library Council recommends that the Public Printer support the request of Regional Depository librarians for a Fall 1989 workshop in conjunction with the regular meeting of the Depository Library Council. We further recommend that Council members be included in the workshop.

RATIONALE: The regional depositories held a productive workshop and have several projects in motion to improve services and collection management which would be enhanced by their continuing contact as a group. Council members participation would ensure that we are fully informed and aware of the problems and concerns of regional depository libraries.

RESPONSE: The Acting Public Printer supports a Fall 1989 workshop of Regional Depository librarians, to be held in conjunction with the regular meeting of the Depository Library Council. Additionally, he encourages all Council members to attend, to ensure that they are fully informed regarding the issues related to Regional depositories. However, GPO cannot be responsible for Council members' expenses incurred in attending a Regional workshop.

16. **RECOMMENDATION:** The Depository Library Council recommends that future Fall Council meetings be scheduled during the third week of October.

RATIONALE: The Columbus Day Holiday on the Monday of the second week in October prevents opportunities for communication of the Depository Library Council with GPO personnel and other Federal government officials. The days before the Council meeting may be critical for last minute arrangements.

RESPONSE: The Superintendent of Documents agrees to schedule future Fall meetings of the Depository Council to the Public Printer during the third week of October.

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Administrative Notes is published approximately twice a month by the Superintendent of Documents, Library Programs Service, Government Printing Office. Address inquiries to: The Editor, Administrative Notes
Government Printing Office
Library Programs Service, SLLC
Washington, DC 20401

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Question 2. c)

AMERICAN LIBRARY ASSOCIATION
50 EAST HURON STREET · CHICAGO, ILLINOIS 60611 · (312) 944-6780

RESOLUTION ON DEPOSITORY DISTRIBUTION OF PUBLICATIONS EXEMPTED FROM TITLE 44 REQUIREMENTS

Whereas, The Depository Library Program is the major component in the dissemination of government information as established in Title 44 USC 1903, and

Whereas, The 100th Congress passed several acts exempting specific executive agencies from the provisions of Title 44 USC 501 with regard to the printing of their publications by the Government Printing Office, and

Whereas, Other agencies have received similar exemptions in the past, and

Whereas, Publications which bypass the Government Printing Office often are not included in the Depository Library Program and are not listed in the Monthly Catalog of United States Government Publications as required by law; and

Whereas, Such exemptions have the effect of restricting the public's access to these publications and diminishing their distribution and bibliographic control;

Resolved, That the American Library Association urge Congress not to grant agencies exemptions from requirements of Title 44 USC 501 without due consideration; and be it further

Resolved, That when exemptions are granted, the legislative history include specific instructions regarding the depository distribution provisions of Title 44 USC that require sufficient copies of said publications be made available for distribution to libraries through the Depository Library Program and that these publications be listed in the Monthly Catalog of United States Publications, and be it further

Resolved, That copies of this resolution be transmitted to the President of the Senate, Speaker of the House of Representatives, and the Chairperson and ranking minority member of each Congressional committee.

ADOPTED BY THE
COUNCIL OF THE AMERICAN LIBRARY ASSOCIATION
January 11, 1989, in Washington, D.C.
Transmitted by

Thomas J. Galvin, Secretary of Council

Question 2. c)

AMERICAN LIBRARY ASSOCIATION
50 EAST HURON STREET   CHICAGO ILLINOIS 60611   (312) 944-6780

RESOLUTION RELATING TO THE FEDERAL ACQUISITION REGULATION

Whereas, An amendment to the Federal Acquisition Regulation (FAR) was published in the March 20, 1987, Federal Register (52 Fed. Reg. 9036); and

Whereas, Part 8 of the FAR was revised to allow executive agencies to bypass the printing procedures required by 44 U.S.C. 501(2); and

Whereas, This amendment was based upon an executive agency opinion of the unconstitutionality of 44 U.S.C. 501(2) without any judicial review; and

Whereas, The effect of this regulation is to eliminate the authority of the Joint Committee on Printing over executive agency printing and Congressional control over printing appropriations; and

Whereas, The reduction of JCP authority over government printing will diminish the amount of information available to the public through the Government Printing Office's depository library and sales programs; and

Whereas, This regulation will result in reduced access and higher fees for government information vital to the economic and social well-being of the nation; and

Whereas, This revision was implemented without any provision for public comment; now, therefore be it

Resolved, That the Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration be urged to rescind the revision of FAR Subpart 8.8; and be it further

Resolved, That a copy of this resolution be forwarded to the heads of each of the three agencies, the Director of the Office of Management and Budget, and appropriate members of Congress.

ADOPTED BY THE
COUNCIL OF THE AMERICAN LIBRARY ASSOCIATION
July 1, 1987, in San Francisco, California
Transmitted by

Thomas J. Galvin

Thomas J. Galvin, Secretary of Council

[redacted]

Question 2. d)

RESOLUTION ON GPO MICROFICHE CONVERSION PROGRAM

WHEREAS, The lack of access to current government information adversely impacts citizens, business organizations, and governmental units of this country, economically, socially and politically; and

WHEREAS, There has been almost no distribution of government publications in microfiche format to depository libraries, international exchange partners, or through the Government Printing Office (GPO) Sales Program since August 27, 1987; and

WHEREAS, The Library Programs Service of the Government Printing Office has rejected large quantities of contractor-produced microfiche due to poor quality; and

WHEREAS, Over 12,000 titles now await microfiche conversion, including 5,000 title in a defaulted contract, thus preventing depository libraries from carrying out their mandate to provide ready access to government information; and

WHEREAS, These problems have been further compounded by a second contract award to and default by the same microfiche contractor to convert the Code of Federal Regulations to microfiche; now, therefore, be it

RESOLVED, That the American Library Association urge the Joint Committee on Printing to direct the Government Printing Office to expedite the awarding of contract(s) for production and distribution of microfiche titles not affected by possible litigation; and, be it further

RESOLVED, That the American Library Association urge the Joint Committee on Printing to direct the Government Printing Office to immediately identify and implement paper or other appropriate alternative means of distribution for government publications unreasonably delayed by current or future procurement disputes; and, be it further

RESOLVED, That the American Library Association strongly support efforts by the Government Printing Office in developing specifications for future contracts that ensure high quality production and timely distribution of microfiche products.

Adopted by the Council of the
American Library Association
New Orleans, Louisiana
July 13, 1988
(Council Document #74)

[redacted]

Question 2. d)

RESOLUTION ON PAPER DISTRIBUTION OF THE CONGRESSIONAL RECORD

WHEREAS, The Congressional Record is a document which is fundamental to the historical record of the United States and is an important resource in all types of libraries; and

WHEREAS, The final bound Congressional Record is the permanent legal record of the work of the United States Congress; and

WHEREAS, A March 1988 Resolution of the Depository Library Council to the Public Printer supports the expressed need of the depository library community for the option of receiving the Congressional Record in paper format; and

WHEREAS, Title 44 of the United States Code requires Regional Depository Libraries to maintain a permanent collection of all federal publications; and

WHEREAS, In April 1987, the Joint Committee on Printing, as publisher, passed a resolution which directed the Government Printing Office to provide a choice of formats for certain publications, including the Congressional Record, as an option for all Depository Libraries; and

WHEREAS, The Government Printing Office has announced that it does not intend to offer paper format an an option for volumes 129-131 of the permanent edition of the Congressional Record to Depository Libraries located in all Congressional districts of the United States; and

WHEREAS, The planned distribution of the limited number of printed copies of the bound Congressional Record, volumes 129-131, is primarily limited to the Washington, D. C., area; now, therefore, be it

RESOLVED, That the American Library Association urge the Joint Committee on Printing to direct the Public Printer of the United States to comply with the Committee's previous resolution and make the permanent printed edition of the Congressional Record available as an option for all Depository Libraries.

Adopted by the Council of the
American Library Association
New Orleans, Louisiana
July 13, 1988
(Council Document #73)

— Question 2. d)

AMERICAN LIBRARY ASSOCIATION
50 EAST HURON STREET CHICAGO ILLINOIS 60611 (312) 944-6780

RESOLUTION ON ELECTRONIC PILOT PROJECTS FOR DEPOSITORY LIBRARIES

Whereas, The federal depository library program was established by Congress to provide federal government information at no cost to the public through depository libraries; and

Whereas, Federal government information is increasingly being disseminated through electronic means; and

Whereas, Access to government information in electronic format is essential for an informed public; and

Whereas, The Joint Committee on Printing resolved on April 9, 1987, to urge the Government Printing Office to initiate pilot projects testing the dissemination of federal information in electronic format to depository libraries; and

Whereas, The JCP had full knowledge of the pending Office of Technology Assessment study on federal information distribution at the time the resolution was passed; and

Whereas, The information industry was well represented on the JCP's Ad Hoc Committee on Depository Library Access to Federal Automated Databases and participated fully in the work of the committee; and

Whereas, At least sixteen agencies have volunteered to participate in the projects, recognizing the depository library program as a vehicle for fulfilling the legal mandate to disseminate information to the public; and

Whereas, Electronic distribution of government information to depository libraries may result in substantial long range cost savings to the Government Printing Office; and

Whereas, The House Appropriations Committee denied the transfer of monies from GPO's revolving fund to support the pilot projects in FY 88 pending results of an Office of Technology Assessment study of federal information dissemination; and

Whereas, Continued delays in the implementation of the pilot projects seriously compromise public access to government information; now, therefore be it

Resolved, That the American Library Association urge Congress to authorize adequate funds for FY 1988 to implement pilot projects for dissemination of government information in electronic format through the depository library system.

ADOPTED BY THE
COUNCIL OF THE AMERICAN LIBRARY ASSOCIATION
July 1, 1987, in San Francisco, California
Transmitted by

Thomas J. Galvin
Thomas J. Galvin, Secretary of Council

Question 2. d)

AMERICAN LIBRARY ASSOCIATION
50 EAST HURON STREET · CHICAGO, ILLINOIS 60611 · (312) 944-6780

RESOLUTION ON ELECTRONIC DISSEMINATION OF GOVERNMENT INFORMATION TO DEPOSITORY LIBRARIES

Whereas, A democratic society depends on ready and equal access to government information by and about its government; and

Whereas, Government information in any format is government information; and

Whereas, For over a century, the Federal Depository Library System has been the key element in the distribution of printed government information to academic, business and general users on a wide geographic basis; and

Whereas, A number of government agencies are currently able to provide copies of floppy disks, CD-ROM products, and other forms of electronic media to the Government Printing Office for direct distribution to depository libraries; and

Whereas, Many, though not all, depository libraries are now capable of accepting and utilizing appropriate electronic products for immediate use in disseminating government information to their users; and

Whereas, Depository libraries should be involved in decisions regarding choice of appropriate formats for publication of government information; and

Whereas, Immediate dissemination of such electronic products to meet public demand is urgently needed prior to the completion of the pending Office of Technology Assessment study of the long-range factors in disseminating electronic government information; and

Whereas, The Joint Committee on Printing's Ad Hoc Committee on Depository Library Access to Federal Automated Data Bases, the Association of Research Libraries, and the American Library Association have recently issued reports indicating the immediate need for implementing varied forms of electronic dissemination to depository libraries; now, therefore be it

Resolved, That the American Library Association urge the Public Printer to prepare a comprehensive plan and request an appropriation for FY 1989 to immediately implement electronic dissemination of government information in various formats appropriate to users of depository libraries; and be it further

Resolved, That the American Library Association urge the House and Senate Appropriations Committees to provide an appropriation and allow for the reprogramming of current monies to permit the distribution to depository libraries of electronic government information currently available from government agencies; and be it further

Resolved, That a copy of this resolution be presented to the Public Printer of the United States, the Joint Committee on Printing, the House Appropriations Committee, and the Senate Appropriations Committee.

ADOPTED BY THE
COUNCIL OF THE AMERICAN LIBRARY ASSOCIATION
January 13, 1988, in San Antonio, Texas
Transmitted by

Thomas J. Galvin
Thomas J. Galvin, Secretary of Council

Question 3. a)

Freedom of Information

New York University
Elmer Holmes Bobst Library

Selected Resources

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American Library Association. *Washington Newsletter*.

American Library Association Government Documents Round Table. *Documents to the People*.

FOIA, Inc. *Our Right to Know*.

JAI Press. *Government Information Quarterly*.

National Committee Against Repressive Legislation. *The Right to Know and the Freedom to Act*.

OMB Watch. *Eye on Paperwork*. Series includes *Monthly Review of OMB Decisions*, *Action Alert*, and periodic special reports.

Pergamon Press. *Government Publications Review*.

Privacy Times, Inc. *Privacy Times*.

Reporters Committee for Freedom of the Press. *The News Media and the Law*.

Smith, Robert Ellis. *Privacy Journal*.

The Washington Monitor, Inc. *Access Reports/Freedom of Information*.

[redacted]

Question 3. c)

RESOLUTION ON LIBRARY FEE WAIVERS UNDER THE FREEDOM OF INFORMATION ACT

WHEREAS, The American Library Association has vigorously supported the Freedom of Information Act (FOIA) as a guarantor of principles fundamental to a democratic society: "the people's right to know," the free flow of ideas, and public access to government information; and

WHEREAS, The charging of fees under the FOIA represents such a substantial barrier to requesters that Congress amended the FOIA in 1986 to limit fees to only those requesters who sought information for private commercial uses, such as bidding on contracts or researching competitors; and

WHEREAS, Congress intended to provide favorable treatment to any disseminators of information, clearly defined the dissemination of information to the public as a protected use of the FOIA, not a commercial use, and clearly recognized libraries and depositories of public records as active disseminators of information: "[T]hat of course is the primary function of libraries and repositories of public documents," stated the chief Senate sponsor of the 1986 amendments; and

WHEREAS, In the modern information age, libraries serve the public by actively acquiring and disseminating information, linking the public to electronic databases, and creating public access to otherwise unavailable sources of information; and

WHEREAS, The Department of State, in particular, and other Executive Branch agencies such as the Office of Management and Budget and the Department of Justice, have interpreted the 1986 FOIA amendments exclude libraries from waivers of fees, by using excessively narrow definitions of "information dissemination" and of "educational institutions" that would allow preschools to qualify, but not major public research libraries; and

WHEREAS, Executive agencies' denial of fee waivers to libraries has a chilling effect on the likelihood of libraries using the FOIA for the benefit of the public; and

WHEREAS, Executive agencies have denigrated the very function of libraries in our democratic society by describing the role of libraries as "passive dissemination," and have further declared, in a letter from the State Department to an ALA member library, the National Security Archive: "Merely making records available to those who may request them (much the same type of dissemination that government agencies provide through the FOIA) will not itself contribute significantly to the public's understanding of the operations of government;" now, therefore, be it

RESOLVED, That the American Library Association urge federal executive agencies to follow the clear intent of Congress, to recognize libraries as educational institutions and information disseminators under the Freedom of Information Act, and to waive FOIA fees to libraries open to the public; and, be it further

RESOLVED, That the American Library Association recommend congressional action to correct this egregious misinterpretation of congressional intent, if the agencies involved do not make the necessary changes in their fee waiver practices; and communicate these concerns over the status of libraries under the FOIA to all appropriate federal agencies and congressional committees.

Adopted by the Council of the
American Library Association
Washington, D. C.
January 11, 1989
(Council Document #38)

APPENDIX 7.—LETTER TO CHAIRMAN WISE FROM MARSHALL J. BREGER, CHAIRMAN, ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
2120 L STREET, N.W., SUITE 500
WASHINGTON, D.C. 20037
(202) 254-7020

May 10, 1989

OFFICE OF
THE CHAIRMAN

The Honorable Robert Wise
Chairman
Subcommittee on Government Information, Justice, and Agriculture
Committee on the Government Operations
B-349B Rayburn House Office Building
House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

It has come to our attention that the Subcommittee on Government Information, Justice, and Agriculture recently held a hearing on electronic information and the Freedom of Information Act (FOIA). This is a subject that has been studied by the Administrative Conference of the United States and addressed in a recommendation of the Conference. I am writing to be sure that you are aware of our work in this area.

In December 1988, the Administrative Conference adopted Recommendation 88-10, Federal Agency Use of Computers in Acquiring and Releasing Information (1 CFR §305.88-10). The recommendation is based on a report prepared for us by Professor Henry H. Perritt, Jr., of the Villanova University School of Law. A copy of each is enclosed.

The recommendation is intended to guide agencies in addressing the questions that will arise when an agency considers whether to acquire or release information in electronic form. Part A contains general guidance on such matters as whether electronic records should be deemed records subject to the FOIA and whether an agency should be expected to write new computer programs for the purpose of responding to a FOIA request. Starting with the proposition that a "record" in the context of the FOIA includes information maintained in electronic form, the Conference recommends that agencies not deny access to electronic data on the grounds that (i) the data are not "records," (ii) retrieval of the electronic information is equivalent to creation of a "new" record, or (iii) programming is required for retrieval. In responding to FOIA requests, agencies should provide electronic information in the form in which it is maintained or, if so requested, in such other form as can be generated directly and with reasonable effort from existing databases with existing software. In general, we suggest that the concept of reasonableness is a useful guideline for resolving controversies about such matters.

Recommendation 88-10 also suggests an analytical framework that may assist agencies in assessing options when electronic acquisition or release of information can facilitate performance of the agency's mission. Relevant factors identified in the recommendation include costs and benefits as well as the appropriate roles of the public and private sectors. In addition, the Conference urges agencies to experiment with electronic means of providing public participation in administrative proceedings.

I hope that the enclosed materials are of use to the subcommittee and its staff as it studies these issues. If the Administrative Conference can be of further service, I encourage you to contact me.

Sincerely yours,

Marshall J. Breger
Chairman

Enclosures

MJB:DMP/sda

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES
2120 L STREET, N.W., SUITE 500
WASHINGTON, D.C. 20037
(202) 254-7020

OFFICE OF
THE CHAIRMAN

1 CFR § 305.88-10

Recommendation 88-10

Federal Agency Use of Computers in Acquiring and Releasing Information

Adopted December 8-9, 1988

The rapid evolution of computer technology raises many economic and policy issues that affect the acquisition and release of information by government agencies. New information technologies can improve public access to public information and reduce paperwork burdens. They can also impose significant economic burdens, however, and they may stimulate competition between government agencies and established electronic information enterprises. The essential role of information in a democratic system underscores the need to examine with care the opportunities that electronic information storage and transmission provide for improving the flow of information between government agencies and the public.

The following recommendations are intended to guide agencies in addressing the questions that will arise when an agency considers whether to acquire or release information in electronic form, either to facilitate performance of the agency's mission or to fulfill requirements established by the Freedom of Information Act (FOIA) or other laws.[1]

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[1] OMB Circular A-130 (50 Fed. Reg. 52730, Dec. 24, 1985) provides a general framework for management of federal information resources. The relationship between parts of this recommendation and provisions of the OMB Circular is as follows. Recommendation A reflects the same policy as Paragraph 7(g) of the Circular, but provides additional detail. Recommendation B deals with electronic acquisition, a subject addressed in proposed OMB guidelines, but not in detail in the existing version of Circular A-130. Recommendation C suggests a cost-benefit approach to defining agency electronic dissemination activities essentially consistent with that prescribed by the Circular, but offers a finer level of analytical detail to guide agency selection among three different levels of release. Recommendation D suggests defining the boundary between public and private sectors based on a cost-benefit analysis; this is endorsed by Paragraph 7(e) of Circular A-130, but Recommendation D defers less to private sector activities than the Circular. Recommendation E lists more specific cost and benefit categories to be considered than does the Circular. Recommendation F reflects the same policy as that set forth in Appendix IV to

At the present stage in the evolution of government electronic information policy, the most one can do is to suggest an analytical framework within which agency electronic system designers, policy makers, and budget planners can assess their options. The process and substance of decisionmaking within this framework should, of course, conform with general principles of administrative law.

Because experience is now relatively limited and information technology is subject to rapid evolution, when Congress sets policy it should do so on as broad a basis as possible. Because changes in electronic information capability occur at a different pace in different sectors of the society, transitional arrangements will be necessary to ensure that electronic acquisition and release do not disadvantage major segments of the population.

The pertinent considerations depend on the context in which electronic acquisition or release of information is addressed. For example, the factors relevant to the release of information in electronic form in response to discrete FOIA requests differ from those that bear on discretionary agency decisions to release information broadly through electronic publishing. As a further example, resolution of issues pertaining to the acquisition of information in electronic form might depend on such factors as the technological capacity of the private parties from whom electronic filing is to be requested.

Recommendation A addresses the Freedom of Information Act. The FOIA was written with paper records in mind. The problem is to apply the Act to information maintained in electronic form. This recommendation does not seek to provide comprehensive guidance but does address in general terms such matters as whether electronic records should be deemed records subject to the FOIA and whether an agency should be expected to write new computer programs for the purpose of responding to a FOIA request.

Recommendations B and C discuss principles applicable to electronic acquisition and release of information, respectively. Recommendation D offers principles for defining the

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Circular A-130 (discussing paragraph 11(a)). Recommendations G and H have no counterparts in the Circular. Recommendation I discusses the role and limits of government-wide policy; Circular A-130 is an example of such a policy. Recommendation J is consistent with Paragraph 9(c) of the Circular.

appropriate roles of the public and private sectors in the provision of electronic acquisition and release systems.

Recommendations C and D envision a three-step process for evaluating possible new electronic information products. The first step in the evaluation process is to identify the current level of release of the information that would be contained in a new electronic information product. There are in general terms three possible levels of agency activity in releasing information: (i) "dissemination" or "publishing", leading to the broadest availability of information; (ii) "disclosure", involving wholesaling to private information suppliers or providing electronic release capability in public reference rooms; and (iii) "access", involving ad hoc release in response to discrete requests. For the special meaning of these and other related terms used in this recommendation, it is important to refer to the appended glossary.

The second step is to identify the benefits and costs of replacing or supplementing existing means of release with various levels of electronic release. An agency should not offer an electronic information product unless the cost-benefit analysis demonstrates that the electronic alternative analyzed is likely to be superior to existing means. The third step is to define the most desirable public and private sector roles, applying principles described in Recommendation D.

Deciding to "promote" electronic publishing does not necessarily mean a direct, retail, electronic publishing and distribution role for the government, if private sector electronic publishing activities and commitments are more cost effective (see Recommendation D). Electronic publishing contemplated by this recommendation also can occur through depository libraries. In some cases it may be appropriate to retain both paper and electronic versions of the same information, even though costs almost certainly will be higher than for either form alone.

Recommendation E identifies cost and benefit categories that should be considered in applying Recommendations B, C and D. Recommendations F through J deal with discrete questions of policy and technology: for example, the use of private telecommunications systems, the undesirability of exclusive private or public control of information, and the need to stay abreast of developing technologies.

These recommendations do not address such important issues as protection of trade secrets or privileged commercial information, invasion of personal privacy, or the need for Congress and agencies to consider allocating budgetary resources so that FOIA staffs will include persons skilled in using electronic databases. Nor do they address in detail the security of electronic databases. Those subjects deserve separate investigation.

The recommendations also do not address issues pertaining to automation of internal agency functions including important questions of records retention, evidentiary use of electronic records, and program administration. Rather the recommendations assume that an agency has automated or will automate an identifiable portion of its activities and therefore is confronted with the questions of whether and how to establish interfaces between internal electronic information systems and the outside world.

RECOMMENDATIONS

A. Freedom of Information Act

1. In interpreting the Freedom of Information Act, agencies should recognize that a "record" includes information maintained in electronic form.

2. Agencies using electronic databases rather than paper records should not deny access to the electronic data on the grounds that the electronic data are not "records," that retrieval of the electronic information is equivalent to creation of a "new" record, or that programming is required for retrieval. In responding to FOIA requests, agencies should provide electronic information in the form in which it is maintained or, if so requested, in such other form as can be generated directly and with reasonable effort from existing databases with existing software. Agencies, however, should not be obligated under the FOIA to create large new databases for private advantage, thus using agency resources for

private purposes. Agencies should use a standard of reasonableness in determining the nature and extent of the programming that provides an appropriate search for and retrieval of records in responding to FOIA requests, and in determining the extent to which FOIA requesters may ask the agency to produce data organized in formats other than those used by the agency in the regular course of its operations.[3]

3. Differences in technologies and database structures used by individual agencies make it necessary, for the near term, to define FOIA obligations on a case-by-case basis. Further experience with electronic information systems is a prerequisite to the formulation of general rules applicable to such controversies under the Act as how requesters must identify the records sought, how much programming, if any, an agency must do, and how costs shall be borne. The concept of reasonableness applied to searches for paper information made in response to FOIA requests should provide a useful guideline for resolving controversies over the application of FOIA to electronically maintained data.

B. Acquisition of Information in Electronic Form

1. Agencies should acquire information in electronic form when they use, or will use, the information in that form and when most information submitters already maintain information electronically, or have ready access to intermediaries who will prepare and submit it in electronic form. When agencies sponsor electronic acquisition programs, they should make clear their intention that all information required will eventually be available to them in electronic form, either by strictly administering exceptions to mandatory programs, or by undertaking the conversion of paper submissions into electronic form themselves.

2. When most providers of information ("filers") are technologically sophisticated, it is appropriate for agencies to require electronic filing of information, after developing standard

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[3] Agencies should be able to recover the costs of complying with FOIA requests, including programming costs, in a manner consistent with the Freedom of Information Reform Act of 1986, 100 Stat. 3207, 3207-48 (1986), amending 5 U.S.C. §552(a)(4)(A), and related OMB guidance, 52 Fed. Reg. 10012, 10017 (1987).

formats in consultation with the filer community, and after appropriate testing and transition periods.

3. In determining whether to require or permit electronic filing of information and in designing the particulars of an electronic acquisition program, agencies should carefully weigh the costs and benefits of electronic acquisition of information. The analysis should address the factors identified in Recommendation D together with other considerations made relevant by the agency's mandate.

4. Agencies initiating electronic acquisition programs should take steps to facilitate electronic filing by entities having limited technological capacity (without raising the costs for sophisticated entities), including the optional use of "smart forms." When a significant proportion of the filer community is technologically unsophisticated, electronic acquisition may be feasible only through intermediaries. In such cases, agencies should create economic incentives for electronic filing rather than mandating it. Part of the economic incentive to file electronically under voluntary electronic acquisition programs can be the imposition of a fee on technologically sophisticated filers who choose to file on paper, assuming the statutory authority to do so exists.

C. Release of Information in Electronic Form

1. Electronic information release policies should depend on such factors as (a) whether the desired level of release consists of electronic publishing, electronic disclosure, or electronic access in response to FOIA requests (see the glossary for definitions of these terms); (b) the agency's policies in releasing like information maintained in paper records; and (c) the costs and benefits of replacing or supplementing an existing paper medium with an electronic medium.

2. When a statute or agency policy mandates the publishing of information, the agency should itself electronically publish the information or facilitate its electronic publication by others, unless the cost-benefit analysis suggests the desirability of restricting publishing to

the paper medium, possibly accompanied by a lower level of electronic release.[3] If the agency publishes the information only on paper, it should consider electronic publication of the availability of the paper information products. Where an agency publishes information electronically, it should consider the feasibility of providing dial-up access.

3. When a statute mandates public reference room disclosure, or paper products presently are made available through a public reference room, agencies should provide electronic disclosure in public reference rooms of information already in electronic form. Such agencies should consider the costs and benefits of upgrading from electronic disclosure to electronic publishing. Agencies should also make information disclosed electronically available to any requester in an electronic form that would be easily usable by information resellers.

4. In those instances where an agency maintaining information in electronic form has no mandate to release information other than in response to FOIA requests, the agency should consider upgrading release of appropriate parts of this information to electronic disclosure through public reference rooms and wholesaling in electronic bulk form to private sector requesters.[4]

D. Allocation of Responsibilities Between Public and Private Sectors

1. Agencies that have decided under Recommendations B and C to acquire or release information in electronic form should define the appropriate roles of the public and private sectors in providing that information and related products (including telecommunications facilities, indexes and retrieval software as well as raw data). That choice should depend on the relative costs and benefits of privately versus publicly provided information products.

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[3] When a statute mandates electronic publishing, the agency would not have discretion to restrict publication to a paper medium or to a lower level of electronic release.

[4] The prices for such electronic information would be determined under the general user fee statute, 31 U.S.C. §9701, or under the FOIA. See OMB's user fee guidelines, restated in App. IV to OMB Circular A-130, 50 Fed. Reg. 52748 (1985).

2. When choosing between publishing and a lower level of electronic release of information, an agency should determine whether private sector providers are willing to supply electronic products having features (e.g., user-friendly menus) that will give the public greater benefits or lower costs than would electronic publishing by the agency. When an agency relies on the private sector for electronic publishing of agency information, the agency should seek to establish by contract the nature of the products to be provided.

3. When an agency determines that its mission warrants new electronic means of acquisition or release of information and the private sector will not commit to provide them at appropriate prices, the agency should provide them, if clearly identified non-economic and economic benefits outweigh the capital and marginal costs. Agencies should recognize, however, that there may be circumstances where the costs to an agency would suggest the wisdom of creating incentives for the private provision of the desired electronic information product -- for example, the free use of agency-developed software.

E. Determination of Costs and Benefits

1. Agencies should take into account the following costs in the decisionmaking processes suggested in Recommendations B, C and D:

(a) Capital costs to the agency of establishing the product, and the probable economic life and other uses over which the costs should be allocated;

(b) Capital costs to information consumers and information providers to utilize the product, and the probable economic life and other uses over which these costs should be allocated;

(c) The marginal costs to the agency for user access;

(d) Marginal costs to users for obtaining the information;

(e) Marginal costs to electronic information providers of updating the electronic information;

(f) Unrecovered costs associated with existing government or private sector capital that would be made obsolete by the new product;

(g) The costs of updates and upgrades in service levels or capacity necessary to permit intended benefits to be realized at levels of demand expected over the long term; and

(h) Costs of changing to standard formats or of handling different formats.

2. Agencies should take into account the following benefits in decisionmaking processes suggested in Recommendations B, C and D:

(a) Savings associated with eliminating the cost of producing and maintaining existing paper products;

(b) Savings to agencies and consumers associated with upgrading the level of information release from ad hoc FOIA disclosure to electronic disclosure in a public reference room;

(c) Savings to agencies and consumers associated with upgrading paper public reference room disclosure to electronic publishing;

(d) Increase in the number of interested persons having access to information;

(e) Improvements in the utility of information for its intended purpose because of improved organization and retrieval capabilities; and

(f) Reductions in delays associated with transferring information from an agency to eventual consumers.

3. Cost-benefit analyses should take into account FOIA obligations, including obligations to protect trade secrets and other exempt information. In designing electronic databases, agencies should consider the types of FOIA requests likely to be received for data in the database, consulting with representative users when feasible. Insofar as it is consistent with agency mission performance, databases should be designed so as to facilitate responses to FOIA requests. A proper rule of thumb is that it should not be any more difficult to obtain information under the FOIA after automation than before.

4. In some cases, effective design may require some sacrifices in electronic FOIA retrieval capability. In these cases, agency designers of electronic databases and retrieval software should consider how FOIA requests can be satisfied consistent with the spirit of the Act. For example, an agency might choose to make raw data available to requesters in computer-readable form along with retrieval software, so that requesters can effect their own retrievals. In other situations, new electronic information products may reduce costs of FOIA requests, to both requesters and agencies. This would occur, for example, if information were published or otherwise made accessible electronically in a public reference room, rather than provided only on paper in response to FOIA requests.

F. Exclusive Control of Public Information

An agency generally should not grant a private party exclusive control of its electronic information or of the acquisition or release thereof. Nor should the agency itself as a general matter maintain such control in the absence of a compelling public purpose. Where an agency has, and wishes to exercise, authority to enter into an exclusive arrangement providing a private sector vendor with a preferential right to electronic information, the agency should first consider whether the analysis suggested in Recommendations B, C, D and E demonstrates that efficiencies can be achieved through such an arrangement. The agency should also guard against the possibility that the arrangement may be inconsistent with its responsibilities under the FOIA or may impair the ability of the agency and the public to benefit from subsequent technological developments.

G. Technology Issues

1. Agencies should use proven technologies in their electronic acquisition and release systems. They should stay abreast of the state-of-the-art in all matters related to the electronic acquisition and release of information and should be particularly alert to the need

for up-to-date and effective access control and other techniques required to maintain an appropriate level of security.

2. Agencies should seek to base electronic information formats on existing standards efforts such as American National Standards Institute standards on Electronic Business Data Interchange[5] before developing their own distinctive format definitions.[6]

3. Whenever possible, agencies should use public data networks rather than developing their own communications links for public filers or consumers.

4. Agencies should consider conducting demonstration projects to experiment with evolving electronic information technology.

H. Electronic Participation in Administrative Proceedings

Agencies should experiment with electronic means of providing public participation in rulemaking, adjudication and other administrative proceedings, while retaining a means of effective participation for persons who lack the means to access the electronic information system.

I. Government-wide Policy on Electronic Information

1. A government-wide policy on electronic information is desirable to afford guidance to agencies. Such a policy should articulate goals consistent with those expressed in the foregoing recommendations.

2. Congress should formulate the larger value judgments necessary for a government-wide policy on electronic information.[7] These include the roles of public and private sectors;

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[5] These standards are currently designated as "X.12".

[6] Cf. Recommendation 78-4, Federal Agency Interaction with Private Standard-setting Organizations in Health and Safety Regulation, 1 CFR §305.78-4.

[7] See, e.g., U.S. Congress, Office of Technology Assessment, *Informing the Nation: Federal Information Dissemination in an Electronic Age* (October 1988).

who ought to pay for increased information utility; and the level of funding to be provided by the government.

3. Because agencies often are in the best position to apply the considerations identified in this recommendation, Congress should normally defer to agency judgment in selecting methods to implement congressionally enacted policies when the agencies have offered rational justifications for their electronic information program decisions.

J. National Institute of Standards and Technology

The National Institute of Standards and Technology should continue to work with the U. S. Patent and Trademark Office to advance electronic data storage and transmission technology, as, for example, its work with high-capacity storage technology, and should inform agencies about commercially available products and services to facilitate electronic acquisition and communications.

GLOSSARY

Bulk form: large quantities of data in nearly raw form, with little formatting information or other added value, usually maintained and transferred on magnetic tape or cassettes or high capacity optical or magnetic disks.

Data product: a specific form of electronic information, sometimes including data structures, indices, retrieval software, and telecommunications links.

Database: a body of information maintained in electronic form, from which parts can be retrieved electronically.

Dial-up: a form of electronic dissemination through which anyone with a computer, a modem, and access to an ordinary telephone line can retrieve information from an electronic database.

Electronic access: the lowest level of electronic release; the ability to obtain agency information; communicating information to consumers.

Electronic acquisition: obtaining information from the public electronically; includes electronic filing; submitting information to an agency in electronic form.

Electronic disclosure: an intermediate level of electronic release; making information available electronically to the public at one or only a few places.

Electronic dissemination: the highest level of electronic release; using electronic means to make information widely available to the public at places where it is used; same as electronic publishing.

Electronic publishing: same as electronic dissemination.

Electronic release: communicating information to users in electronic form; a generic term that includes access, disclosure, and dissemination.

Hardware: computers and associated peripherals.

Public data networks: communications common carriers that aggregate small volume data communications and thereby reduce the cost of high-quality transmission of data.

Retailing: providing information in a format different from that used by the government, or with accompanying analysis, aggregation or segregated subsets, enhanced search or retrieval capabilities, or otherwise tailored to be of value to specialized or individual end users; also may include distribution components of electronic release.

Retrieval: extracting a part of a database and presenting it to the requester in a form understandable by humans.

Smart forms: interactive computer data acquisition programs that guide the filer in answering questions.

Software: computer programs or data.

Wholesaling: providing resellers or large end users information only in the form used by the government or only in bulk form.

APPENDIX 8.—"GEOPHYSICS BREAKTHROUGH CREDITED 'ENTIRELY' TO CD-ROM," WRITTEN BY KRIS HERBST, THE SCIENTIST, NOVEMBER 28, 1988

Geophysics Breakthrough Credited 'Entirely' To CD-ROM

BY KRIS HERBST

Just one week after receiving a compact disk containing a definitive database of worldwide geomagnetic and solar activity readings, a project team led by UCLA geo- and space-physics professor Robert L. McPherron recently made an important find. They discovered a previously unreported correlation between magnetic field variations at the geomagnetic pole and the strength of the ring current produced by drifting particles in the Earth's Van Allen radiation belts. This information will allow McPherron to predict solar wind activity, which is influenced by the magnetic field variations, during certain months of the year by analyzing geomagnetic readings from an earth-based observatory at the magnetic north pole, eliminating the need for an expensive program of monitoring from outer space.

This important discovery, says McPherron, was "entirely the result" of the easy access to data made possible by compact disk technology. The 5-inch disk he used, a prototype released early last summer, was the first to be created by the Solar-Terrestrial Physics Division of the National Oceanic and Atmospheric Administration's (NOAA) National Geophysical Data Center (NGDC) in Boulder, Colo., in cooperation with NASA. It represents one of the first applications of CD-ROM—for compact disk read-only memory—technology to scientific research.

McPherron's discovery illustrates the power of CD-ROM when applied to scientific disciplines, such as earth sciences, that accumulate massive databases of observations spanning a period of years. Prior to CD-ROM, making use of this type of data required retrieving the information from magnetic tapes using mini- or mainframe computers and creating software programs to analyze the data, a process that is often prohibitively time-consuming and expensive.

According to McPherron, the disk he is working with contains "520 megabytes of some of the most frequently used data in the field of solar terrestrial physics." This data, if presented in the form of text typed onto double-spaced, double-sided pages and bound into 500-page volumes, would fill nearly 300 volumes. He says that duplicating the tapes on which the data appeared would cost, at $100 per tape, a total of $25,000—an unaffordable amount of money for McPherron and most other research groups as well.

By contrast, the disk McPherron uses is priced at $100, and CD-ROM data banks are generally obtainable for not much more than that—thus making possible research projects that—because of the immensity of data required—would otherwise be beyond reach. "Prior to distribution of the NGDC disk, there were probably fewer than 10 laboratories in the world that had all of the data it contains," McPherron says.

BIGGER PICTURE: Enhanced geophysical maps are created by overlaying various pictorial data stored on a single disk.

"Even those who had these data would not find it easy to analyze because they were distributed on more than 250 different magnetic tapes." As a result of the release of the disk, there is one discovery per week, on average, coming from scientists around the world, according to Joe H. Allen, chief of the Solar Terrestrial Physics Division of NGDC.

The NGDC disk consists of measurements gathered by the World Data Center System of observatories around the world and includes observations of sunspot data going back to 1610, when Galileo first used the telescope to discover sunspots and began their documentation. The disk also includes more recent data on solar flare and geomagnetic activity and soundings of the ionosphere. NASA's National Space Science Data Center at Goddard Space Flight Center, Greenbelt, Md., contributed to a database of hourly solar "wind" measurements from 1977 to 1985 that is so large it would require 10 hours to transmit it (at 9600 baud) to researchers over NASA's SPAN computer network.

The U.S. Geological Survey (USGS) is "very eagerly looking to the future to be able to distribute this information at little or no cost to the scientific community, and to allow them to deal with actual full-blown databases, not just extracts of abstracts," says E. J. McFaul, a USGS computer scientist. The USGS is developing a proposal for United Nations funding of a program to donate CD-ROM technology to Third World scientists. McFaul says the program will lead to the "democratization of earth science data around the world" by giving Third World scientists access to data that has been available only to more affluent organizations.

This will also benefit U.S. scientists because of the increasing emphasis on studying phenomena that have a global impact. "In order to do global science, we need data from other countries," says Allen Hittelman, NGDC's acting division chief of solid earth geophysics. "By bringing scientists in other countries up to speed, we gain cooperation and other data in their domain."

Production of CD-ROM disks is increasing and the associated costs are declining as the technology is commercialized. Once a master disk is stamped, CD-ROM disks can be produced for about five dollars apiece, not counting the expense of cleaning up and formatting the data before it is put on a disk. Several government agencies and private firms sell CD-ROM versions of scientific databases, recovering the cost of the data preparation by charging from 100 to several thousand dollars per disk. Most compact disks are selling for between $400 and $800.

CD-ROM disks now available or in production include the NGDC's "Geophysics of North America," a consolidated collection of topography, magnetics, earthquake seismology, and stress data for the U.S., Mexico, and Canada; an NGDC disk containing downhole and geophysical data from the Deep Sea Drilling Project; U.S. West's disk of daily hydrological readings from all of the USGS's gauging stations on the U.S. for the past 100 years; USGS's GLORIA side-scan survey of the Gulf of Mexico seafloor, which created vivid images of the ocean bottom with technology developed by the Jet Propulsion Lab for interplanetary exploratory missions; and a disk of earthquake data from the National Earthquake Center.

The CD-ROM disk titled "Selected Geomagnetic and Other Solar Terrestrial Physics Data of NOAA and NASA," CD-ROM NGDC-01 can be obtained for $100 by writing to Joe Allen at the NGDC, 325 Broadway, Boulder, Colo. 80303. Any research scientist with a PC/AT-type computer, an EGA monitor, and a CD-ROM disk reader (a system that can be purchased for about $3,000) can use the CD-ROM disk and accompanying software that allows a PC to access the CD-ROM data. ■

Kris Herbst is a freelance writer in Washington, D.C.

CD-ROM Technology Revs Up To Revolutionize Science Research

Far from being limited to geological data, CD-ROM applications currently number around 200—and they're expected to double within a year. Link Resources, a high-technology firm based in New York, predicts that by 1990, well over a million CD-ROM drives will be installed and that the total will increase by half a million per year thereafter for the foreseeable future.

Until recently, the market had been dominated by off-the-shelf databases (the federal government is the world's largest database provider) and reference works. But now custom applications are also finding their way to market.

Scientists interested in learning more about CD-ROM and keeping up with the rapid developments in this area might want to check out a couple of journals and books. Several information and computer trade journals now have separate sections devoted to CD-ROM developments, and two new monthly journals are devoted solely to this technology: *CD ROM Review*, published by IDG Publications, and *CD Data Report*, published by Langley Publications. Perhaps the best reference book is called *CD ROM: The New Papyrus* (Lambert and Ropiequet, eds., Microsoft Press, 1986, Redmond, Wash.). A second volume, *Optical Publishing*, was published in 1987.

Another useful tool for scientists interested in CD-ROM is available from Diversified Data Resources Inc., a CD-ROM developer based in Falls Church, Va. The company has attempted to compile descriptions of all the commercially available CD-ROM applications on a disk that it calls "Sourcedisc." The disk lists 320 applications and includes demonstrations from about 75 disks. It also includes the full text of the book *CD ROM: The New Papyrus* and it's companion volume *Optical Publishing*.

Some samples of currently available scientific CD-ROM applications:

- The Aquatic Sciences and Fisheries Database, published by Cambridge Scientific Abstracts, includes studies and journal articles drawn from several U.N. scientific organizations, the International Governmental Oceanic Commission, and leading research centers throughout the world.
- The *Powder Diffraction File* is a database of information, collected since 1940 by the International Center for Diffraction Data that can be used to identify 46,000 previously unknown compounds that are in a crystalline form.
- The Registry of Mass Spectral Data contains the entire registry of mass spectral data. Published by John Wiley & Sons, it includes more than 130,000 spectra of more than 90,000 compounds.
- Material Safety Data Sheets, published by Aldrich Chemical Co., contain detailed information on 30,000 products that contain hazardous ingredients. Information on each product is broken down into 100 categories for use by school and university laboratories, hospitals, waste management firms, industrial hygienists, and fire and emergency response organizations.
- A University of Washington database of the Genesis of Atlantic Lows Experiment (GALE) data collected from ships, land stations, balloons and airplanes is available on CD-ROM.
- The Philadelphia-based Institute for Scientific Information has begun publishing its *Science Citation Index* in a compact disc edition.
- The Jet Propulsion Lab's Voyager II image collection includes images taken from Voyager II during planet fly-bys. Saturn and Jupiter disks, a three-disk set of Uranus images, and disks containing Mars data and oceanographic [illegible] data are all available from the lab.
- The Online Computer Library Center (a nonprofit organization headquartered in Dublin, Ohio) publishes CD-ROM versions of educational, scientific, and agricultural data including the entire database of National Technical Information Service citations, including more than two million titles of reports from the Department of Energy, the Department of Defense, and NASA; data from the U.S. Geological Survey; and the National Agricultural Library's AGRICOLA and CRIS databases, which are updated quarterly.

—K.H.

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APPENDIX 9.—FOLLOWUP TO CONGRESSIONAL TESTIMONY

Follow-up to Congressional Testimony

of

E. J. McFaul

The United States Geological Survey (USGS) manages many of the mineral and energy resources which are critical to the well being of our Nation. This enormous task has been performed admirably over the years by a dedicated and professional corps of USGS people who have earned the respect of scientists around the world.

In the USGS, like most other scientific agencies, data collection has been developed to a true science but data dissemination is still an imperfect art. This is mainly due to the lack of an effective means with which to implement widespread data dissemination. This situation is now about to change. A new and revolutionary means for the cost-effective distribution of digital data now exists and is just beginning to be explored. Known as CD-ROM (Compact Disc - Read Only Memory), this technology offers orders-of-magnitude improvements over previous methods of data dissemination.

CD-ROM technology embodies many characteristics that make it extremely attractive for a wide range of information management and data dissemination applications. Some of these characteristics are as follows:

1) The Existence of Standards - CD-ROM is distinctly different from other types of optical storage (specifically, WORM and erasable) in that both physical and logical standards exist. The physical standard resulted from the CD audio specification promulgated worldwide by Philips and Sony. The logical standard is a result of the efforts of the High Sierra Group (HSG) and, more recently, the International Standards Organization (ISO 9660). The existence of these standards adds a degree of stability and longevity to the technology that ensures hardware and software compatibility for the foreseeable future.

2) Low Cost of Production - The cost of producing of CD-ROM disc has fallen dramatically over the past 18 months. A disc can now be mastered for around $1,500 and replicated at a cost of $2.00 per disc. Thus, for a run of 500 discs, the cost per disc would be approximately $5.00. These prices are based on 5-day turnaround, with 1-day turnaround available at a higher cost.

3) Inexpensive CD-ROM Readers - The cost of readers is currently in the $500 range and is expected to drop further as prices continue to follow the lead of CD audio players which use essentially the same technology.

4) High-Density Media - A single CD-ROM disc weighing less than an ounce is capable of storing over 650 megabytes of data. At $5.00 per disc, the cost of using CD-ROM storage works out to a media cost of less than 1 cent per megabyte compared to a cost of $.50 per megabyte on a 1600 bpi magnetic tape. The small size of a CD-ROM disc translates into reduced data transportation costs where 650 million bytes can be mailed across the country for less than a dollar.

5) Stable Media - In addition to CD-ROM media being about 50 times less expensive than magnetic tape, CD-ROM discs required no special storage environments or periodic maintenance as is often the case with magnetic tape.

6) Direct Access Organization - CD-ROM provides direct access to any data contained on the disc in contract to magnetic tape which affords only sequential access. With an average access time of well under a second, CD-ROM provides an information environment well suited to interactive processing.

We've only just taken the first few steps of a long and prosperous journey that I believe will forever change the way in which our government, and indeed, our entire society deals with data and information. Many of these applications are already beginning to revolutionize the data distribution activities in a number of our governmental institutions. But, even beyond its ability to make data and information more readily available at lower costs, CD-ROM holds out the prospect of actually altering the distribution of global information processing resources.

As head of the Federal Government's Special Interest Group on CD-ROM Applications and Technology (SIGCAT), I receive several phone calls a day from people all over the country inquiring about this new technology called CD-ROM. The level of interest, particularly throughout the Federal sector, is accelerating. Many agencies are now moving beyond the prototype stage and are gearing up for mass production. One agency alone has doubled the total number of titles available in the industry during FY89.

There are several reasons behind all of the domestic CD-ROM activity. First is the economic motivation. CD-ROM applications can produce some rather dramatic reductions in the costs of accessing and disseminating information. One agency financed its entire CD-ROM project through the savings realized by decreased online costs. Another agency lowered the price of its data products by a factor of over 100 (yes, two orders of magnitude) simply by making them available on CD-ROM. Another reason for the groundswell of CD-ROM activity is productivity improvement. When an agency can reduce the time required to access information from half an hour on microfiche to several minutes on CD-ROM, the project receives a lot of attention and encourages others to try for similar results.

All of these CD-ROM projects are contributing to and helping build a technology base. Such a base is necessary for the stability and longevity of CD-ROM and provides the foundation needed for continued growth. There are many contributors to this technology base. Users are contributing by accepting CD-ROM as a new way of managing their information at the PC level. Technology and service providers are contributing by opening up new opportunities and markets as they begin to truly understand and exploit the benefits of CD-ROM. Entrepreneurs are contributing by developing innovative new products incorporating CD-ROM. But CD-ROM's real potential to profoundly change our global society is just now beginning to be explored.

Without a doubt, all of the domestic activity in CD-ROM is very exciting. Indeed, a whole new American industry has been established in just a few short years. But the use of CD-ROM also has implications on a worldwide scale. This technology can finally provide underdeveloped countries with the ability to become full-fledged members of the global computing community. CD-ROM's ability to provide access to hundreds of megabytes of data, coupled with the incredible power of today's microprocessor chips, allows any Third World country to assemble a workstation with mainframe-like data processing capability for under $10,000. That same country can then begin to address national resource management projects that were heretofore impossible. This capability translates into a potential for enormous social, economic, and environmental progress. It also encourages a feeling of independence and self-determination that is not possible when a country must depend on wealthier nations to provide "mainframe aid."

In many countries, where telecommunications to support conventional online database access are either outrageously expensive or simply nonexistent, CD-ROM offers the only practical alternative for large database access. In light of this situation, a governmental health organization has placed over 300 CD-ROM systems throughout Latin America; as a result, for the first time, local health officials now have access to up-to-date, comprehensive medical databases. The implications of these types of applications, which dramatically improve the quality of life for an entire populace, are immense.

Another attribute of CD-ROM that I believe will eventually eclipse all of the economic and productivity benefits discussed so far is its ability to combine multiple disciplines and information perspectives on a single, low-cost medium. Geographic Information Systems (GIS) technology already employs this multidisciplinary approach to problem analysis by "overlaying" various geographically related data sets. Unfortunately, the data sets that are typically used with today's GIS's are so large that only mainframe and minicomputer systems can accommodate them. The vast storage capacity of CD-ROM will change all that and allow GIS technology to be implemented on high-end PC's, so that a global community of users can have access to this powerful means of problem analysis.

We are already beginning to witness this "synergy of CD-ROM" in the scientific community, where discs are now being produced that contain all of the world's definitive information on specific subjects. This capability is beginning to provide researchers with tools that immeasurably enhance the single-discipline approach that has dominated scientific research for many years. Indeed, the very fact that all of this wide-ranging information is now available on a single inexpensive piece of plastic is actually fostering new scientific discoveries.

Instead of analyzing a database through a narrow information channel typical of conventional online database access, CD-ROM and today's powerful PC's make it possible to analyze that same database right on a scientist's desktop. A CD-ROM drive provides an information conduit to the user that is at least a 1000 times greater than a typical 1200-baud dialed-up service. This allows for the use of color, windowing, graphics, and other information-intensive operations. Thus, not only can all of the data on a particular subject be made available through CD-ROM, but these data can be accessed in a way that allows the full power of today's advanced computing techniques to be applied.

When one considers that this entire capability can now be made available to scientists and researchers anywhere in the world at affordable costs, one begins to appreciate the true power of CD-ROM to change the ways in which our global society deals with and benefits from one of its most important resources -- information.

E. J. (Jerry) McFaul
Computer Scientist
U.S. Geological Survey
Office of Scientific Publications
904 National Center
Reston, VA 22092-9998
(703) 648-7126